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EXECUTIVE SUMMARY AND RECOMMENDATIONS

Through its analyses, the Commission on Health and Safety and Workers' Compensation believes that the workers' compensation reforms in the 1990's in California have made overall significant positive changes in these critical programs. However, the system is still too complex and confusing and benefit levels remain a concern.

CHSWC recommends that further improvements can and need to be made to achieve optimum system performance to serve all of the employees, employers and taxpayers in California.

CHSWC looks forward to continuing its work with the community in striving to fulfill these goals.

Workers' Compensation System

Through their involvement with CHSWC meetings and projects, the workers' compensation community has indicated that the reforms generally improved the system, but that serious problems linger. Workers' compensation premiums and the number of claims have decreased; medical-legal costs have fallen sharply; and abusive claims practices have been reduced. However, stakeholders agreed that the system remains highly adversarial and litigious, is excessively complex, and delivers modest benefits at high costs.

Overall, CHSWC recommends that the entire workers' compensation community continue on its cooperative path to accomplish the following goals, as specified in the Constitution and adopted by the CHSWC Blue Ribbon Permanent Disability Policy Advisory Committee:

- The administration of the workers' compensation program "...shall accomplish substantial justice in all cases expeditiously, inexpensively, and without incumbrance of any character ..." [California Constitution Article 14 (Labor Relations), Section 4]
- Efficiently decrease uncompensated wage loss for disabled workers in California.
- Increase the number of injured workers promptly returning to sustained work.
- Reduce transaction and friction costs, including "costs" to injured workers.

Toward this end, the Commission also makes the following observations and recommendations about specific areas of these programs.

Workers' Compensation Information

CHSWC realizes that, if the injured worker is to be served by the system, he or she must be aware of his or her rights and obligations under the workers' compensation program. CHSWC studies have indicated that some injured workers receive inconsistent and inaccurate information. To address this need, the Commission engaged in a project that developed prototype informational materials – fact sheets and a video - for use by the community and available to the public at no charge.

CHSWC recommends that the Division of Workers' Compensation and other community members use, promote and facilitate the distribution of the prototype workers' compensation informational materials.

CHSWC also recommends that members of the community continue to work together to develop, update, and distribute useful information for workers about the California workers' compensation system.

Permanent Disability

The Commission realizes that the rating of permanent disability is one of the most difficult tasks of the workers' compensation system. The method by which California rates and compensates injured workers for permanent disability has enormous impact on the adequacy of their benefits, their ability to return to gainful employment, and the prompt delivery of benefits at the lowest cost to employers.

The Commission contracted with RAND to study the workers' compensation permanent disability system in California. The RAND study found that there was a significant uncompensated wage loss for all permanently disabled workers, particularly for workers with permanent disability ratings of 25% and under.

The Commission recommends further study of permanent disability, and has contracted with RAND for additional analyses to incorporate data on self-insured employers, and to determine the reasons for uncompensated wage loss sustained by permanently disabled workers.

The Commission further recommends and has taken steps to develop an empirically based tool for rating and compensating industrially injured workers who sustain permanent disability.

Return to Work

The Industrial Medical Council believes that an injured worker should return to work as soon as it is medically feasible. If the injured worker is unable to immediately engage in his/her usual occupation, the injured worker should be returned to modified or alternative work, provided that that work can be practically accommodated by the employer. The

treating or evaluating physician should recommend appropriate and specific work restrictions.

CHSWC concurs with this position and recommends implementation of this concept at all levels.

Return to Work Efforts

The RAND study of permanent disability indicates that return to work efforts should be improved for the California worker. The Commission's Blue Ribbon Permanent Disability Policy Advisory Committee recognizes and recommends enhanced efforts to return industrially injured workers to sustained work.

CHSWC recommends continuing efforts by the workers' compensation community to promote injured workers' prompt return to sustained employment. The Commission recommends and has engaged in further study to measure and assess return to work programs and to determine "best practices". The Commission further recommends that specific policies and strategies be developed from those findings.

Benefits

The Commission wants to ensure that the workers' compensation system provides proper and adequate benefits to workers sustaining industrial injury or illness.

The Commission, RAND, and the blue ribbon PD Policy Advisory Committee recognize that there are several ways to decrease uncompensated wage loss, all of which may be considered a "benefit" to the injured worker.

- Improve return-to-work practices
- Increase job retention after return to work
- Increase benefits

CHSWC voted (6 for, 0 against, 1 abstain, and 1 absent) to endorse an increase to the workers' compensation permanent disability benefit levels "in accordance with the findings of the RAND study on the issue of uncompensated wage loss suffered by permanently disabled workers."

CHSWC recommends continuing efforts to determine the appropriate types and levels of benefits to compensate workers sustaining industrial injuries and illnesses.

Vocational Rehabilitation

The 1993 workers' compensation reform legislation made major changes affecting the level and delivery of the vocational rehabilitation benefit. The Commission contracted for

a study to help evaluate the impact of the workers' compensation reform legislation on the vocational rehabilitation system. The study is assessing whether the reforms reduced the cost of the rehabilitation benefit for employers and determining how those changes have affected outcomes for injured workers. Preliminary findings indicate that VR may not now be considered to be a completely successful program.

The Commission recommends that a Vocational Rehabilitation Roundtable, composed of interested members of the workers' compensation community and the public, be established to review the Vocational Rehabilitation benefit.

DWC Audit Program

The DWC audit program was created by the reform legislation of 1989 in response to complaints that too many insurers were not making workers' compensation benefit payments on time. Recent DWC reports and a February 1998 hearing of the Senate Committee on Industrial Relations indicate that the problem of late benefit payments to injured workers continues.

In April 1998, the Senate Industrial Relations Committee and the Assembly Insurance Committee jointly requested that the Commission conduct a study of the Audit Unit of the Division of Workers' Compensation with respect to its effectiveness, its staffing level and whether or not audit penalties are adequate or appropriate.

The Commission conducted an evaluation of the DWC Audit Program as requested by the Legislative committees. CHSWC recommends that continuing efforts be made to accomplish an audit program that will:

- Increase incentives for claims administrators to deliver benefits in a timely and accurate manner,
- Identify poor performing locations,
- Reduce the impact of poor performers on the delivery of benefits to workers, and
- Assist stakeholders, where necessary, in monitoring system performance.
- Accurately measure the performance of locations that are audited, and
- Select locations in a manner that it is fair and efficient
- Function at minimum cost to the taxpayer and without undue burden upon the insurer, adjusting location, or employer.

System Complexity

The California workers' compensation system is complex, and in many ways unnecessarily so. The workers' compensation system operates pursuant to provisions in the law, regulations, and policies and procedures. This assemblage of various instructions is inconsistent and confusing in various areas.

CHSWC recommends that efforts be continued to reduce system complexity and inconsistency and to streamline operations.

CHSWC recommends that a task force be formed to review and correct discrepancies among the law, regulations, policy and procedures and other instructions. CHSWC urges that unnecessary regulations, policy and procedures, and instructions be identified and eliminated.

Penalties

Labor Code Section 5814 provides that when payment of compensation has been unreasonably delayed or refused, either prior to or subsequent to the issuance of an award, the full amount of the order, decision or award shall be increased by 10 percent. Recently, a WCAB judge ruled that a clerical error leading to a one-week delay in benefits for Adrienne Stuart was subject to this provision and assessed a penalty of 10 percent of the entire award. The State Compensation Insurance Fund appealed this ruling to the California Supreme Court, which reversed the WCAB decision.

In light of the Supreme Court decision on Stuart and stakeholders' concerns, CHSWC recommends that Labor Code Section 5814 be reviewed to provide a more fitting penalty assessment, which is appropriate to the length and type of delay.

Benefit Notices

When an employee files a claim for worker's compensation, the employer or insurer is responsible for communicating the status of the claim to the employee by means of a series of benefit notices. The workers' compensation community has cited the benefit notice system as confusing and ineffective.

CHSWC recommends that efforts be taken to identify benefit notice problems that contribute to problems with claims and make needed improvements to the benefit notice system. Benefit notices should transmit clear and concise information to injured workers.

DWC District Office Operations

Several studies, including KPMG, RAND, WCRI, and the CHSWC DWC Profile, have determined a need for improving the operations of the DWC district offices throughout the state. Inconsistency and lack of uniform procedures are often cited. RAND suggests that the system is poorly utilized and burdened by unnecessary paperwork and litigation issues.

The Commission recommends that DWC continue and enhance its efforts to streamline processes, establish and maintain uniform procedures, and restructure its organization.

CHSWC also recommends that DWC continue to invest in infrastructure, training and technology improvements.

CHSWC further suggests that DWC seriously consider the specific recommendations derived from CHSWC's ongoing evaluation of DWC district office operations, discussed in the "Program Oversight" section of this report.

DWC Lien Workload

One of the most persistent administrative problems facing the DWC in recent years has been the development of a persistent backlog of lien claims at some DWC district offices. In many instances, liens for payments made over 10 years ago were being filed on workers' compensation cases. In other instances, liens on the same case are not being heard at the same time, leading to costly notification and scheduling, churning of cases and delays in resolution. It is reported that in newer cases, many of the lien claimants are not receiving proper notice of upcoming hearings, primarily due to the delegation by DWC of the responsibility for issuing the hearing notice to the parties.

CHSWC recommends the continuation of its "Lien Resolution Roundtable", comprised of interested members from the workers' compensation community. The Roundtable is discussing a proposal developed by CHSWC staff with legislative and administrative recommendations to address lien issues. CHSWC recommends continuing evaluation of this ongoing problem.

Fraud

The Commission believes that fraud in the California workers' compensation system has decreased since the implementation of the reform legislation. Traditional fraud claims are down and some blatant medical mills have been put out of business. However, CHSWC and the workers' compensation community recognize that fraudulent activities continue.

CHSWC recommends that anti-fraud efforts be directed at all types of fraud, including employers who willfully fail to secure workers' compensation coverage, large medical-mill cases and small injured worker cases.

The Commission recommends that the community continue to identify and reduce fraudulent activities perpetrated by anyone and everyone in the system, including but not limited to employers, employees, insurers, and providers.

The Commission also recommends an ongoing, independent evaluation of the effectiveness and cost-benefit of these anti-fraud programs.

Illegally Uninsured Employers

CHSWC has become aware that some California employers, particularly in certain industries such as construction and home cleaning services, fail to secure required workers' compensation coverage. Employers that are not covered for workers' compensation impose a burden on injured workers, on employers that comply with the workers' compensation insurance requirements, and on the state's taxpayers.

The Commission engaged in pilot projects designed to test methods to identify illegally uninsured employers and bring them into compliance. The purpose is save monies from the state's Uninsured Employers Fund and General Fund, assist injured workers, and reduce the current competitive disadvantage and the tax burden on responsible employers.

The Commission is pleased that the Department of Industrial Relations has adopted the Commission's approaches and recommendations on this problem and has announced an ongoing "Operation Insure" to identify illegally uninsured employers and bring them into compliance. The Commission recommends that these and other efforts to secure workers' compensation coverage for all workers continue.

The Commission further recommends that coordinated multijurisdictional efforts be continued to identify and bring into compliance those employers who are in the "underground" economy – employers that are unknown in the system, do not have the required business licenses or permits and do not pay the proper taxes.

Medical-Legal Evaluation Process

Reform legislation changes to the medical-legal evaluation process were intended to reduce both the cost and frequency of litigation, which drive up the price of workers' compensation insurance to employers and lead to long delays in case resolution and the delivery of benefits to injured workers.

In 1995, the Commission initiated a study of the medical-legal process. The study, based upon data from the Workers' Compensation Insurance Rating Bureau, found that recent reforms to the medical-legal process in the California workers' compensation system have had a dramatic impact in reducing the costs and frequency of medical-legal examinations.

The Commission recognizes the value of the information derived from the medical-legal evaluation process study and has continued the study each year. This year CHSWC assisted the WCIRB in revising the survey questionnaire and sampling methodology.

The Commission appreciates the efforts of the WCIRB in gathering additional data elements that will yield a better understanding of the reform impact and provide more information for the benefit of the community.

Incomplete Physician Reports

Many permanent disability evaluators in the Division of Workers' Compensation indicate that their largest problem is the poor quality of medical reports that they have to rate. The Commission has engaged in a study to determine the nature and magnitude of the problem, ascertain who is producing incomplete reports and why, develop quantitative analysis, provide recommendations for improving the quality of reports and calculate the cost/benefit of changing the system.

The Commission recommends that the Industrial Medical Council continue its efforts to train treating physicians to produce useful medical-legal reports.

Treating Physician Presumption

Recent changes in workers' compensation laws have given the designated treating physician unprecedented levels of authority and autonomy in controlling the type and duration of medical treatment and legal standing of evaluations. California's current reliance on treating physicians as the principal source of medical-legal evaluations are of concern to the workers' compensation community, as determined by the RAND project team during its evaluation of permanent disability. Problems may occur because (1) treating physicians are often unfamiliar with the language and needs of the workers' compensation system; (2) treating physicians are perceived by some parties to be biased; and (3) the legal presumption of correctness for a treating physician's evaluation may create an arbitrary tactical advantage to the party selecting that physician. Because treating physicians are at times chosen more for their forensic than their treating skills, some are concerned that the quality of a worker's medical care could be compromised.

Based upon the RAND report and other sources, the Commission recommends that the issue of the presumption of the correctness of the treating physician for medical-legal reports should be revisited with a view towards possibly reducing their exceptional legal authority.

Carve Outs

A provision of the workers' compensation reform legislation allows construction contractors and unions to collectively bargain over alternative workers' compensation programs, also known as Carve Outs. The Commission engaged in a study that is identifying the various methods of alternative dispute resolution that are being employed in California carve-outs, and beginning the process of assessing their efficiency, effectiveness and compliance with legal requirements.

The Commission recommends that caution be exercised when considering the adoption of carve-out programs. Carve-out programs offer labor and management opportunities to negotiate better arrangements for both. However implementation of structures that take advantage of the opportunities offered by carve outs have been difficult. In addition, large cost savings have failed to materialize.

The carve-out program should not be viewed as a panacea, but as an opportunity to attempt innovations that could lead to improvements in the statutory system.

DWC Information Systems

Labor Code Section 138.6 directs the Division of Workers' Compensation to develop a cost-effective workers' compensation information system (WCIS) compatible with the IAIABC's Electronic Data Interchange (EDI) system:

- *to help the Department of Industrial Relations to manage the workers' compensation system more effectively,*
- *to help evaluate the efficiency and effectiveness of the benefit delivery system,*
- *to help measure how adequately injured workers are indemnified, and*
- *to provide statistical data for research.*

The Commission has been somewhat hampered in its evaluation of DWC's operations due to the lack of availability of consistent workload data and performance measures. CHSWC recommends that DWC continue its efforts to develop this information system, contingent upon appropriate and effective security and confidentiality measures.

CHSWC also urges DWC to improve its current computer systems to provide basic data needed for ongoing program administration.

Electronic Filing of Documents

The state's health, safety and workers' compensation systems in California necessarily require the transmission of a lot of information among various entities in the public and private sectors. The evolution of technology now enables the electronic transmission of such data, with savings in time and resources and with increased speed and accuracy.

CHSWC supports efforts to implement procedures and methods for the electronic filing of documents among all parties. The capability for electronic filing would assist in the prompt delivery of proper benefits in a cost-beneficial manner.

Targeted Inspection Program

The reform legislation directed the Division of Occupational Safety and Health to begin a program targeting especially hazardous employers for consultations and inspections, to be funded by assessments upon employers with higher than average workers' compensation costs. However, the assessment methodology has been shown to be problematic and SB 996 was passed requiring that DIR submit a report to the Legislature by January 1, 1998, addressing one or more alternative methods of funding the program.

Pursuant to Labor Code Section 62.9, the assessment is scheduled to sunset on January 1, 1999.

CHSWC recommends an independent review and evaluation of the program.

Health and Safety of Young Workers

The Commission has engaged in several projects designed to assist in the health and safety of young workers. It is funding a statewide task force -- known as the California Study Group on Young Worker Health and Safety -- charged with coordinating strategies to protect young people from work related illness and injury. The study group is composed of groups and individuals dealing with California youth employment and education issues, as well as others who can play a role in educating and protecting young workers. The Commission also funded the development of a video to be used in the schools to educate young workers on workplace health and safety and their rights and responsibilities under the workers' compensation system.

The Commission recommends that ongoing efforts and focus need to continue in the area of young worker health and safety.

Workers' Compensation Appeals Board

The workers' compensation community encourages the WCAB to take on a more active role in judicial oversight, in an effort to achieve uniformity in the application of the law.

CHSWC concurs and supports this recommendation.

Funding

The Division of Workers' Compensation user-funding, as specified in California Labor Code Section 62.5 is scheduled for sunset on January 1, 1999, unless it is extended by statute.

The assessment for the Cal-OSHA targeted inspection program, as specified in California Labor Code Section 62.9, is also scheduled for sunset on January 1, 1999, unless it is extended by statute.

CHSWC derives its funding by appropriations from a special fund entitled the "Workplace Health and Safety Revolving Fund". Monies are deposited into the Workplace Health and Safety Revolving Fund from collections made by the DWC from administrative and civil penalties assessed by the Audit Unit pursuant to Labor Code Section 129.5 and from civil penalties assessed against physicians pursuant to Labor Code Section 4628. The amounts collected vary from year to year.

EXECUTIVE SUMMARY AND RECOMMENDATIONS

In order to avoid the appearance of a conflict of interest, Commission funding should not be totally dependent on the amount of the audit penalties collected by the DWC Audit Unit.

CHSWC recommends that measures be taken to explore the feasibility of funding all three programs through the state's General Fund.

Concerted Efforts

CHSWC appreciates the good working relationship with its community of employees and employers, labor organizations, insurers, attorneys, medical and rehabilitation providers, administrators, educators, government agencies and members of the public.

CHSWC commends this good working relationship and will continue to involve the community as an integral part of its activities.

EXECUTIVE SUMMARY AND RECOMMENDATIONS

INTRODUCTION

The California Commission on Health and Safety and Workers' Compensation (CHSWC) is pleased to present the fourth annual report of its activities to improve vital programs affecting nearly all Californians.

CHSWC was established by the 1993 workers' compensation reform legislation to oversee the health and safety and workers' compensation systems in California and recommend administrative and/or legislative modifications to improve their operation.

Since its inception in 1994, the Commission has directed its efforts towards projects and studies designed to identify and assess problems and to provide an empirical basis for recommendations and/or further investigations. The Commission contracts with independent researchers to insure objectivity, incorporate a balance of viewpoints, and produce the highest quality analysis and evaluation.

CHSWC activities involve the whole community – employees and employers, labor organizations, insurers, attorneys, medical and rehabilitation providers, administrators, educators, government agencies and members of the public. These individuals and organizations have participated in CHSWC meetings, fact-finding hearings and have served on advisory committees to assist CHSWC and independent researchers on projects and studies.

CHSWC projects have dealt with several major areas, including informational services to injured workers, alternative workers' compensation systems, employers that are illegally uninsured for workers' compensation, the health and safety of young workers, and the impact of the reform legislation on the medical-legal process and the vocational rehabilitation program.

The most extensive and potentially far-reaching project undertaken by the Commission is the ongoing study of workers' compensation permanent disability in California. Incorporating public fact-finding hearings and discussions with studies by RAND, the CHSWC project is dealing with major policy issues regarding the way that California workers are compensated for permanent disability incurred on the job.

In its oversight capacity, CHSWC focuses on various aspects of the workers' compensation system in response to concerns raised. These include multi-jurisdictional areas such as anti-fraud activities as well as certain operations of the Division of Workers' Compensation such as the lien case workload in DWC's district offices. At the joint request of the Senate Industrial Relations Committee and the Assembly Insurance Committee, the Commission has undertaken a study of the operations and effectiveness of the DWC audit program.

INTRODUCTION

These concerted efforts, combining rigorous analytical approaches with real world data and experience, have yielded insightful findings on important programs. The Commission's recommendations for system improvements are based upon the results of these activities.

The common goal of all the parties in these efforts is to achieve a system that delivers the proper benefits to injured workers in a prompt and cost-effective manner.

About CHSWC...

**The California Commission on
Health and Safety and Workers' Compensation**

- Created by the 1993 workers' compensation reform legislation.
- Composed of eight members appointed by the Governor, Senate, and Assembly to represent employers and labor.
- Charged with overseeing the health and safety and workers' compensation systems in California and recommending administrative or legislative modifications to improve their operation.
- Established to conduct a continuing examination of the workers' compensation system and of the state's activities to prevent industrial injuries and occupational diseases, and to examine those programs in other states.
- Works with the entire health and safety and workers' compensation community – employees, employers, labor organizations, injured worker groups, insurers, attorneys, medical and rehabilitation providers, administrators, educators, researchers, government agencies, and members of the public.
- Brings together a wide variety of perspectives, knowledge, and concerns about various programs critical to all Californians.
- Serves as a forum whereby the community may come together, raise issues, identify problems, and work together to develop solutions.
- Contracts with independent research organizations for projects and studies designed to evaluate critical areas of key programs. This is done to insure objectivity, incorporate a balance of viewpoints, and to produce the highest quality analysis and evaluation.

INTRODUCTION

CHSWC Members Representing Employers

James J. Hlawek

County Administrative Officer,
County of San Bernardino

Appointed by the Governor to represent
public agency employers



Kristen Schwenkmeyer

Secretary-Treasurer,
Gordon and Schwenkmeyer, Inc.

Appointed by the Senate Rules Committee
to represent employers



Robert B. Steinberg

Senior Partner,
Law Offices of Rose, Klein and Marias

Appointed by the Speaker of the Assembly
to represent employers



Gregory Vach

Director of Workers' Compensation,
Interstate Brands Corporation

Appointed by the Governor
to represent employers

INTRODUCTION

CHSWC Members Representing Labor

Tom Rankin

1998 Commission Chairman

President,
California Labor Federation, AFL-CIO

Appointed by the Senate Rules Committee
to represent labor



Leonard C. McLeod

Finance Committee Chair,
California Correctional Peace Officers' Association

Appointed by the Governor
to represent labor



Gerald O'Hara

Director,
California Teamsters Public Affairs Council

Appointed by the Speaker of the Assembly
to represent labor



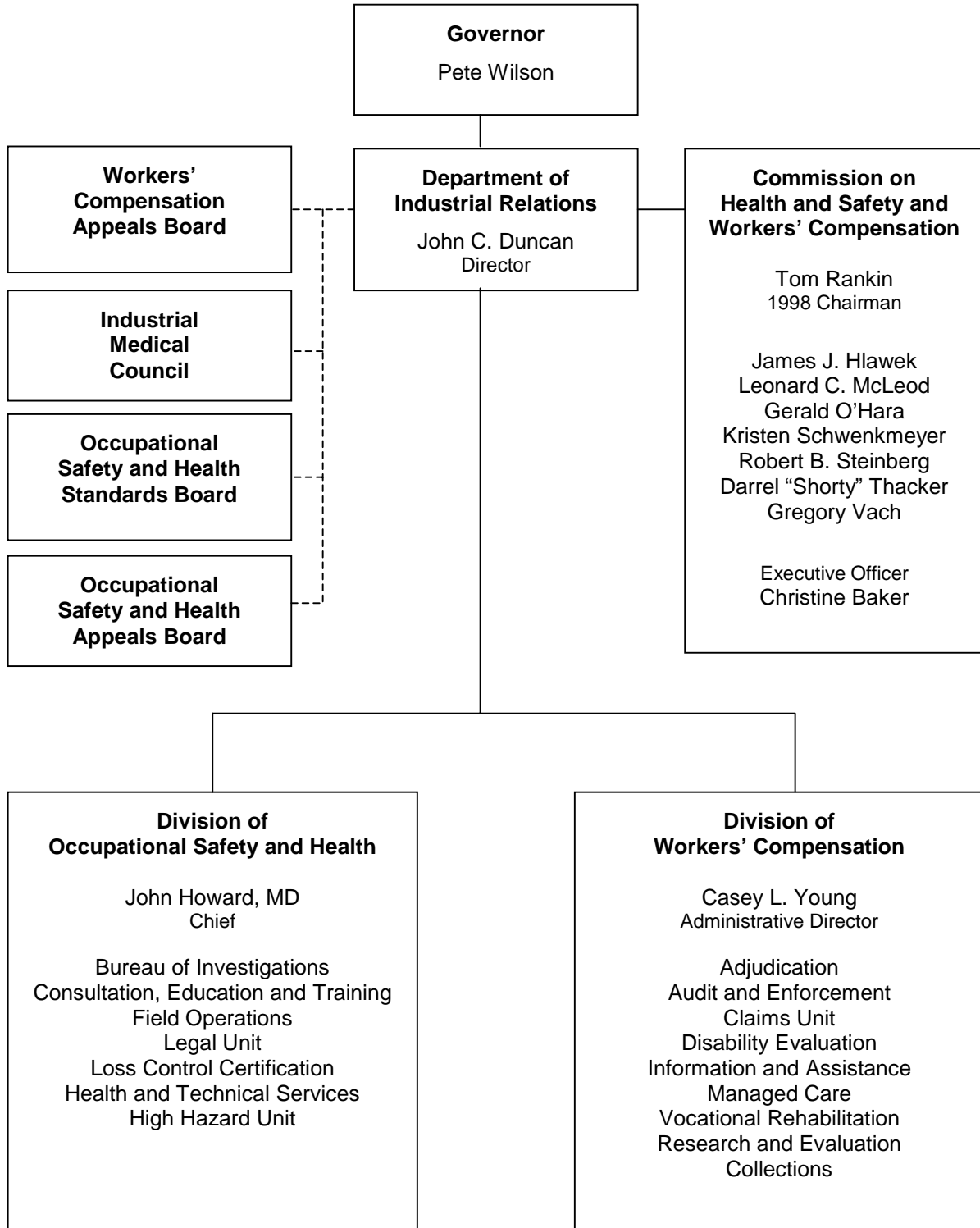
Darrel "Shorty" Thacker

Director, Field Support Operations
Bay Counties District Council of Carpenters

Appointed by the Governor
to represent labor



State of California
Health and Safety and Workers' Compensation Functions



INTRODUCTION

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Reports of CHSWC studies and projects
Information bulletins
Meeting notices'
Workers' Compensation Fact Sheets

CHSWC Publications

CHSWC Annual Reports

1994-95, 1995-96, 1996-97, 1997-98

"Navigating the California Workers' Compensation System: The Injured Workers' Experience" (1996)

Evaluating the Reforms of the Medical-Legal Process
Published in 1996, Updated in 1997

Permanent Disability Study by RAND
Report (1997)
Executive Summary (1997)

Impact of the 1993 Reforms on the Vocational Rehabilitation Benefit: An Interim Report (1997)

Report on CHSWC Fact-Finding Hearing on Workers' Compensation Anti-Fraud Activities (1997)

Issue Paper – Employers Illegally Uninsured for Workers' Compensation (1997)

Literature Review of "Modified Work" (1997)

INTRODUCTION

PROGRAM OVERSIGHT

To address its mandate for overseeing the health, safety and workers' compensation systems in California, the Commission requests that the system administrators provide updates of key aspects of their programs.

This section of the CHSWC Annual Report incorporates the status updates of the administrators on critical program components with analyses derived from CHSWC studies and observations.



California Labor Code Section 77(a)

"The commission shall conduct a continuing examination of the workers' compensation system ... and of the state's activities to prevent industrial injuries and occupational diseases."

Division of Workers' Compensation

District Office Operations

Concern has been expressed regarding the operations of the DWC district offices throughout the state.

The community has cited the closing of some DWC offices, sometimes without sufficient notice to DWC staff, the workers' compensation community, or to the public. Complaints have also been received regarding the level of service provided to injured workers, employers, their representatives, and the public at certain DWC district offices. Specifically mentioned were the following:

- Lack of staff available to respond to in-person and phone inquiries and requests.
- Lost or misplaced case files.
- Inconsistencies in service of hearing notices.
- Inadequate equipment
 - insufficient numbers of computer terminals
 - personal computers are too old
- Hiring freezes have caused unnecessary workload backlogs.
- Calendars need to be set far into future due to hearing backlogs.
- Case "churning" leading to delays in case resolution.

CHSWC Action

In 1997, the Commission implemented a project entitled "CHSWC Profile of DWC District Office Operations." As part of the Commission's responsibility to oversee state operations that administer the workers' compensation program, this project was designed to provide insights and knowledge in areas that have been identified as problematic.

In June 1997, the Commission forwarded findings and recommendations to the DWC administrative director and requested his comments and a description of actions that he has taken or plans to take to address these issues.

Included were the following preliminary recommendations based on CHSWC observations of selected DWC district office operations and discussions with some DWC staff associated with those offices.

- DWC staff would benefit from the establishment of a set of clear expectations and objective standards by which their performance will be evaluated. Every employee should be aware of the mission of DWC and the importance of her or her work assignment in accomplishing that mission.
- DWC should continue efforts to deal with the lien backlogs and consider implementing suggestions in the 1995-96 CHSWC Annual Report regarding coordination with the Employment Development Department (EDD) in the resolution of their outstanding liens with DWC, and in the CHSWC Lien Proposal.
- DWC should consider conducting serious reviews and cost-benefit analyses of any proposals to close district offices and work with the affected employee unions and the community in these endeavors.
- DWC should perform a reassessment of workload/staffing ratios in each DWC district office and consider a reassignment on a statewide basis to yield appropriate ratios in each office. (This would necessitate taking into consideration the patterns of filings and the litigation and hearing requirements of the local bars.)
- Statewide standards need to be developed and adopted and training provided to staff for the setting of calendars.
- The existing DWC policies pertaining to the employment of continuances need to be enforced.
- Efforts should be made to improve DWC infrastructure and staff training. A major one-time capital investment in equipment should be made to reduce paper intensive manual tasks and free staff time for more productive and efficient work.

PROGRAM OVERSIGHT

- Simple personal computer-based programs for some of the more routine and standardized functions should be considered for use in each district office, such as for the tracking of the routing of casefiles to the State Records Center.
- A plan to phase-in new equipment over the next several years (using the existing equipment budget and with a replacement schedule as justification) should be considered by DWC.
- A cost/benefit analysis of having the initiating party, rather than the DWC, serve notices on all case parties, should be performed. The short-term savings derived from delegation may be more than offset by the increased costs of holding additional hearings when all parties did not receive notice.
- A plan to phase-in new equipment over the next several years (using the existing equipment budget and with a replacement schedule as justification) should be considered.

On June 25, 1997, the Commission sent a memo to DWC Administrative Director Casey L. Young requesting his response in writing on how he is addressing, or plans to address, the findings. Mr. Young was also requested to present that plan at the CHSWC meeting on July 25, 1997.

DWC response

At the July 1997 CHSWC meeting, Mr. Young stated that when he read the findings from the Commission's evaluation, there were not any surprises. Mr. Young did not provide a written response.

When CHSWC requested an update for this report, DWC responded that the Division's reorganization would address many of the Commission's concerns and recommendations regarding district office operations.

The 24-Hour Care Pilot Project

Labor Code Section 4612, adopted in 1992 and amended in 1993, established three-year pilot programs of 24-hour health care in California. These programs were set up to test the administrative efficiencies, cost control potential, and service capabilities of having a single system provide health care for occupational and non-occupational injuries and illnesses.

Four individual pilot program designs were approved after the application period in 1994. Since their approval, one of the four has dropped its participation, and another has experienced low enrollments. The vast majority of participating employers and employees are under two related projects, emanating from the northern and southern regional offices of the state's largest health maintenance organization.

PROGRAM OVERSIGHT

Implemented in 1994 with the participation of five employers in San Diego County, the program now includes over 65 employers in four counties. Enrollments in pilot programs have grown steadily and currently stand at nearly 8,000 employees in participating firms. Enrollments, however, are somewhat lower than originally expected. One frequently heard speculation for this is the success of controlling employers' workers' compensation costs outside the pilot program.

DWC reports that employers who entered the program are generally satisfied. Nearly all employers with experience in the program believe it is working well and would like to see it continue. Some cite the impact on their costs. Others feel that the program has led to greatly improved communication with those providing medical care to injured employees. Some like the increased period of medical control. Still others like being a part of an innovative experiment that attempts to blur the lines and treatment arrangements between the various causes of disability. While direct measurement of worker satisfaction with the program is just getting underway, at annual renewals of the individual employer programs, the number of enrollees has generally grown. While a few employees have dropped out of the program along the way, more have joined each year at open enrollment times.

DWC further reports that a comprehensive evaluation, largely funded by external foundation grants, is now underway to test a series of questions raised by the legislation. The evaluation is being conducted by a consortium of the UCLA School of Public Health, RAND, and UC-Berkeley's Survey Research Center. The bulk of the financing comes from the Workers' Compensation Health Initiative of the Robert Wood Johnson Foundation, with other funding from RAND and from assessments on participating employers. The survey instruments and study methodology are likely to be put to use in evaluating other states' experience in 24-hour health care programs. A final report to the Legislature is due at the end of 1998, one year after the close of the pilot programs.

Health Care Organization Program

The Health Care Organization (HCO) program, established by the 1993 Workers' Compensation reform package, expanded the use of managed care techniques in the workers' compensation system. This was viewed as a means of reducing medical costs and facilitating better management of workers' compensation cases.

Employers that contract with certified HCOs gain an extended duration of control over medical care for their industrially injured employees, from the traditional 30 days to 90-180 or 365 days of control.

PROGRAM OVERSIGHT

The effort to certify health plans as HCOs and monitor their provision of care to injured enrollees is an ongoing function within DWC. There are currently 11 certified HCOs. Seven applications for HCO certification are at various stages of the process.

In the spring of 1997, DWC reported that the future of the HCO program was in question. The state Legislative Analyst had recommended eliminating funding for the program from DWC's budget for the 1998-99 fiscal year. Senate Bill 2101 was passed by the Legislature and signed by the Governor, to extend the program and require repayment over the next five years of the loan originally provided from the General Fund to start up the HCO program. The loan is to be repaid from surcharges on fees collected from HCO participants to finance the program's operations.

HCOs and Year Certified

1998	Medical Group at City Center
1997	Kaiser Foundation Health Plan, Northern California
	MedEx Health Care
1996	Priority Comp Net
	Health Plan of the Redwoods
	MetraComp Choice
	US CompCare
1995	Greany Medical Group
	MetraComp Select
	Eisenhower Medical Center
1994	FHP Life Insurance Company

Alternative Workers' Compensation systems ("Carve-Outs")

The Commission is monitoring the alternative workers' compensation benefit delivery system or "carve-out" program established by the Legislature under Labor Code Section 3201.5 and administered by DWC.

DWC reports that the carve out program has grown steadily since its inception. In 1995, the program covered 242 employers, about 6.9 million work-hours and \$157.6 million in payroll. During 1996, the program covered 277 California employers and over 11.6 million work-hours -- equivalent to 5,822 full-time employees (at 2,000 person-hours per one employee-year) with \$272 million in payroll.

CHSWC has initiated a study of carve-out programs. For a complete description of the CHSWC carve out project and a discussion of the preliminary findings, please refer to the "Carve-Out" study under the "Projects and Studies" section of this annual report.

A listing of employers and unions in carve-out agreement is presented on the following page.



Employers and Unions in Carve-Out Agreements

(As of October 10, 1997)

1. An agreement between the California Building & Construction Trades Council and the Metropolitan Water District of Southern California. This is a project labor agreement covering all contractors and subcontractors on the \$2 billion, 5-year Eastside Reservoir Project.
2. An agreement between the District Council of the International Brotherhood of Electrical Workers and its 20 local unions and a multi-employer group called the National Electrical Contractors Association, consisting of about 300 contractors. Each individual employer chooses whether to sign the master carve-out agreement.
3. An agreement between the Southern California District of Carpenters and its 19 local unions and six different multi-employer groups consisting of about 1000 contractors. Each individual contractor chooses whether to sign the master carve-out agreement.
4. An agreement between the Southern California Pipe Trades District Council No. 16 and a multi-employer group called the Plumbing & Piping Industry Council, Inc. Each individual contractor chooses whether to sign the master carve-out agreement.
5. Two agreements between the Cherne Contracting Corporation and Steamfitters Local 250 covering two projects at different oil refineries. [completed]
6. An agreement between TIMEC Co., Inc., and TIMEC Southern California, Inc., and the International Union of Petroleum and Industrial Workers.
7. An agreement between the Contra Costa Building & Construction Trades Council and the Contra Costa Water District. This is a series of three project labor agreements covering all contractors and subcontractors on a \$200,000,000, 2 & 1/2 year dam project called the Los Vaqueros Project.
8. An agreement between the Southern California District Council of Laborers and four different multi-employer groups: the Associated General Contractors of California, Inc., the Building Industry Association of Southern California, Inc., the Southern California Contractors' Association and the Engineering Contractors' Association. Each individual contractor chooses whether to sign the master carve-out agreement.
9. An agreement between the California Building & Construction Trades Council and the Metropolitan Water District of Southern California. This is a project labor agreement covering all contractors and subcontractors on the \$1.1 billion, multi-year Inland Feeder Project.
10. An agreement between the Building & Construction Trades Council of Alameda County and Parsons Constructors, Inc. This is a project labor agreement covering all contractors and subcontractors on the \$1.2 billion, multi-year National Ignition Facility at Lawrence Livermore National Laboratory.
11. An agreement between the District Council of Painters No. 36 and the Los Angeles County Painting and Decorating Contractors Association. Each individual contract chooses whether to sign the master carve-out agreement.
12. An agreement between the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, Local Union No. 342 and Cherne Contracting Corporation for the construction of an oil refinery.

Source: Division of Workers' Compensation

DWC Information System

DWC reports that it is now in the implementation phase for its new California Workers' Compensation Information System (WCIS).

Towards the end of 1997 the Legislature passed and the Governor signed two bills -- SB 450 and AB 1571 -- which provided funding for the implementation of the WCIS beginning January 1, 1998. The Division is currently working with a contractor to finalize the implementation plan and write the data base architecture for the system.

Although the funding approval took place later than originally anticipated (the implementation phase was originally expected to begin on July 1, 1997), the Division reports that it still expects to meet the overall time frames for the completing the project as outlined in the Feasibility Study Report (FSR).

DWC reports that it expects to be able to accept filings on a voluntary basis by the fall of 1998. DWC must also promulgate regulations to implement the funding authorization bills. Proposed rules will be considered at public hearings, which will be scheduled to take place within the next 90 days. The Division is also working with DIR Personnel to implement the staffing process for the new function.

The status of the Permanent Disability Rating Schedule

California employs a permanent disability rating schedule (PDRS) which prescribes the monetary amount an injured worker is to be compensated for specified percentages of permanent impairment incurred due to industrial injury or occupational disease.

The 1993 reform legislation directs the administrative director of the DWC to revise the PDRS and provides that CHSWC must approve changes to the standard disability ratings before they are adopted.

This requirement was not met. The DWC administrative director did not submit a final proposal for a revised permanent disability rating schedule to the Commission.

In late December 1996, the DWC administrative director adopted a revision to the Permanent Disability Rating Schedule (PDRS) effective April 1, 1997. DWC indicates that the revision overhauls the sections dealing with the occupation and age adjustments, adds some ratings that were



California Labor Code §4660(d)

"On or before January 1, 1995, the (DWC) administrative director shall review and revise the schedule for the determination of the percentage of permanent disabilities. The revision shall include, but not be limited to, an updating of the standard disability ratings and occupations to reflect the current labor market. However, no change in standard disability ratings shall be adopted without the approval of the Commission on Health and Safety and Workers' Compensation. A proposed revision shall be submitted to the Commission on or before July 1, 1994."

commonly used but not previously in the schedule, eliminates archaic, unused provisions, and adds extensive instructions, examples and other guidance in the proper use of the schedule. Specifically, about half of the occupational titles listed in the schedule are new.

The DWC administrative director contended that the December 1996 revision did not require the review and approval of the Commission. However, several members of the workers' compensation community had other interpretations of Labor Code Section 4660(d) such that the December 1996 PDRS revision was subject to CHSWC review and approval.

To avoid similar confusion in the future, the Commission entered into negotiations with the Department of Industrial Relations and the Division of Workers' Compensation for a Memorandum of Understanding (MOU) specifying the process by which future revisions to the PDRS will be proposed, reviewed, and approved. The MOU was signed and became effective on September 23, 1997.

At the end of 1997, litigation was filed in Sacramento Superior Court by the Association of California Insurance Companies, which challenged the legality of the way the December 1996 revision to the PDRS was adopted. The court dismissed the case because of lack of jurisdiction, saying that under state workers' compensation law, the matter should have been filed as an action before the WCAB.

In a status report to CHSWC, DWC acknowledged that the December 1996 revision "does not satisfy the part of the mandate requiring that standard disability ratings be updated to reflect changes in the labor market. That portion will be addressed following completion of a RAND study commissioned by the Commission of Health and Safety and Workers' Compensation, which must approve any changes in standard disability ratings."

DWC Audit Task Force activities

DWC reported that its Audit Simplification subcommittee sought to develop means of better focusing limited staff resources on poorly performing claims administrators.

The committee discussed various recommendations for reducing the initial sample size for an audit, and the standards by which expanded audits would follow unsatisfactory audit results. The committee also discussed recommendations to reduce the frequency of audit, or the mitigation of penalties among subjects with good results.

The subcommittee recommendations were incorporated into proposed DWC regulations that were the subject of public hearings in November 1997. Revised proposals were subject to further 15-day public comment periods that took place in February 1998 and August 1998. The division reports that the final revision of the regulations will then be adopted and submitted to the Office of Administrative Law (OAL) for approval.

At the joint request of the Senate Industrial Relations Committee and the Assembly Insurance Committee, the Commission undertook an evaluation of the effectiveness of the DWC Audit Unit. A description of that evaluation is in the "Projects and Studies" section of this report.

The status of the Hospital Fee Schedule

Outpatient services provided by hospitals were previously covered by DWC's Official Medical Fee Schedule. The requirement to create a separate fee schedule for inpatient services was part of the 1993 workers' compensation reform legislation.

The enabling legislation specified that DWC should consider cost and service differentials for various types of facilities. The new hospital fee schedule developed by DWC provides that maximum payments to hospitals for specific diagnoses are calculated by applying a constant "composite" factor assigned to each hospital and derived from the federal Medicare program, along with a weight based on the injury diagnosis.

New regulations to establish an inpatient hospital fee schedule were promulgated by DWC in December 1996 and were scheduled to take effect April 1, 1997 for all hospital admissions involving workers' compensation cases in California. The fee schedule as set forth in Title 8, California Code of Regulations (CCR) Sections 9790.1 and 9792.1 applies to inpatient services where the date of admission is on or after April 1, 1997.

However, on March 31, 1997 the Community Care Network, Inc. filed litigation in Sacramento Superior Court to prevent the Administrative Director from "computing, administering, or implementing the 'Instructions for Payment of Inpatient Hospital Bills.'" The court subsequently denied Community Care Network's request for a preliminary injunction on grounds of jurisdiction but granted a "stay" in order for them to appeal the ruling. To preclude further litigation on the matter and speed resolution of the dispute, the Division and the plaintiff ultimately agreed to a settlement in which the regulations would be amended to address the concerns at issue.

DWC reports that in November 1997, public hearings were held on proposed revisions to the regulations. In February 1998 and again in July 1998, further revisions were the subject of 15-day public comment periods. DWC anticipates that the final regulations will go into effect January 1, 1999.

The status of the Medical Fee Schedule

The current version of the Official Medical Fee Schedule (OMFS) took effect January 1, 1996. Under statute, the fee schedule is to be reviewed and revised every two years. During 1996 and into 1997, a fee schedule advisory group was convened through the Industrial Medical Council, in cooperation with the Division of Workers' Compensation. In July 1996, the IMC contracted with Medicode to compare the current OMFS with other payment schedules. Medicode submitted its analysis in late 1996 amidst questions of

the methodology, and discussion continued in the advisory group. The Division held public hearings in November 1997 on changes recommended by the advisory group and other changes proposed by the Division. In February 1998 and again in July 1998, further revisions were the subject of 15-day public comment periods. DWC anticipates that the new medical fee schedule will go into effect January 1, 1999.

The status of the Medical-Legal Fee Schedule

DWC reported that proposed regulations to revise the Medical-Legal Fee Schedule were the subject of public hearings in November 1997. The proposal would change the Medical-Legal Fee Schedule in only two important respects: follow-up reports would be billed by time, instead of the current flat rate, and the number of "complexity factors" would be increased. In February 1998 and again in July 1998, further revisions were the subject of 15-day public comment periods. DWC anticipates that the new medical-legal fee schedule will go into effect January 1, 1999.

The status of the utilization review regulations

Title 8, California Code of Regulations section 9792.6 became effective July 20, 1995. It requires that any insurers or self-insurers that maintain a utilization review system must notify the Division in writing. Plans themselves need not be submitted to the Division, but a summary of the program must be made available to DWC upon request. Since the regulations were promulgated, approximately 130 claims administrators have filed notice of use of utilization review with the Division.

Implementation of the utilization review regulations has raised several issues. These include: how to allow for telephone authorization of medical treatment, while assuring that authorized treatment is paid for; and how to reduce the paperwork required in current requirement that every written request for authorization be responded to in writing. Revised regulations addressing these and other issues were considered at public hearings held in November 1997 and a revised proposal was out for public comment in July 1998. These proposed revisions are currently under consideration by the Division.

DWC's plan to update and integrate its computer systems

In mid-1996, KPMG-Peat Marwick submitted a study on Business Process Reengineering to the Division, under a contract to study DWC's operations in claims adjudication, disability evaluation, information and assistance, and vocational rehabilitation. The study was intended to serve as the basis for the functional system requirements for the Division's automated computer systems. KPMG also submitted a draft of a Feasibility Study Report (FSR).

DWC reports that neither the final proposal nor a subsequent redraft were approved by state control agencies, which said they were not considering new FSRs from state agencies until year 2000 problems had been addressed.

DWC said that plans for upgraded telephone systems as well as purchasing new computer equipment that could access DWC's various databases are now underway. It is expected that the San Bernardino Regional Center will become the prototype project to be fully functional with the new computer system that can provide this functionality as well as other technological resources.

DWC Reorganization

DWC reports that a major organizational restructuring is now underway. The reorganization stems from DWC's own strategic planning process but also includes many of the business process reengineering proposals contained in the study commissioned from KMPG-Peat Marwick. KPMG staff are assisting DWC in the implementation of the restructuring.

The reorganized structure was scheduled to become effective July 1, 1998, but DWC reports that its implementation has been delayed due to State personnel requirements. Under the reorganized structure, the three regional managers will oversee all dispute resolution activities in the district offices, including vocational rehabilitation and claims adjudication, in addition to disability evaluation and information and assistance functions that will now take place at the regional centers. These regional centers will field all telephone calls, provide information and assistance, as well as issue summary and disability evaluation ratings.

Overall support will be provided by a new Policy Development and Training unit of senior DWC managers and support staff at DWC headquarters. DWC reports that this reorganization should provide better utilization of existing resources, better training for professional and support staff in the various disciplines required for DWC operations, more consistent policy and procedures to be followed in local offices statewide, and better ability to identify policy and/or training issues that may need to be addressed in the future. For example, by centralizing information and assistance resources into regional centers and providing them with the latest technology, the Division believes it will be better able to serve injured workers and other parties in need of public information services in a timely manner.

Status of liens in DWC district offices

In early 1998 DWC announced that its backlog of unresolved liens, once considered one of the major problems facing the Division, had essentially been eliminated. Two special units of workers' compensation referees -- one in Santa Ana and the other in Van Nuys - - which had been specifically set up to handle these medical lien disputes in an expedited manner, have been closed and the workers' compensation referees reassigned.

Beginning in January of 1998, DWC states that all of their district offices are handling their own lien disputes pursuant to the Uniform Lien Policy, which mandates that a good faith effort be made at the mandatory settlement conference to resolve all lien issues. Separate proceedings are not allowed unless a bona fide dispute remains after a good faith effort to resolve it.

The Commission's assessment of the current status of lien backlogs in DWC district offices differs from that of the Division. DWC announced the closing of the special Lien Unit because in its judgment, the lien backlogs have been eliminated. However, the Commission believes that, with the ongoing filings of liens, new lien backlogs have been created within the DWC district offices.

From observations at several on-site visits to district offices and through conversations with DWC personnel, the Commission concludes that, in essence, lien backlogs have been distributed among the district offices, rather than eliminated.

The Commission commends the diligence and perseverance of the DWC district office staff who are making great efforts to deal with this workload, but recognizes that significant backlogs of lien cases remain to be resolved. The Commission also recommends that there be a systematic review of the reasons that so many liens continue to be filed.

Division of Occupational Safety and Health

High-Hazard or Targeted Inspection and Consultation Program

The 1993 reform legislation directed the Division of Occupational Safety and Health (DOSH) to create a program targeting especially hazardous employers for consultation and inspections. The program – High Hazard Employer Program (HHEP) – was designed to reduce preventable occupational injuries and illnesses and workers' compensation losses.

The statute requires HHEP to:

- Identify employers in high hazardous industries with the highest incidence of preventable occupational injuries and illnesses and workers' compensation losses.
- Establish procedures for ensuring that the highest hazardous employers in the most hazardous industries are inspected on a priority basis.
- Establish and maintain regional plans for allocating the division's resources for the targeted inspection program in addition to other inspections required or authorized by statute.
- Coordinate its education, training, and consulting services with the priority established in the regional plans.

PROGRAM OVERSIGHT

In early 1995 DOSH began notifying employers that they have been identified as high hazard places of employment because of a high score on a frequency-based formula based on their experience modification for insured employers or on a severity-based formula for self-insured employers. DOSH offered consultation services to the employers to help them address the occupational safety and health issues that cause them to be high hazard.

As required by statute, DOSH submitted its "1998 Report on the Loss Control Certification Unit and the Targeted Inspection and Consultation Programs" to the Legislature in January 1998. The report is available by selecting "DOSH" under "Occupational Safety and Health" on the DIR web site at www.dir.ca.gov.

Assessment for High-Hazard Program

The HHEP program is paid for by employers who experience higher than average workers' compensation losses. The statute permits the Director of the Department of Industrial Relations to levy an assessment on all employers with an experience modification (ex-mod) or its equivalent for a self-insured employer of 125 percent or more.

Since the program's inception, the methodology for making the assessment has been subject to much concern and discussion within the community. DOSH's "1998 Report" discusses five alternatives to using the ExMod as a method for selecting employers for TICF assessment.

Preliminary Findings

DOSH reports that employers who received targeted consultation assistance or a targeted inspection during the years 1995 and 1996, saw their establishment's workplace injury and illness incidence rates and their workers' compensation indicators improve as a result of the consultation or inspection.

The loss workday case incidence rate (LWDI) decreased by 23.9% for targeted consultation employers and by 18.5% for targeted inspection employers, while the LWDI decreased an average of 7.3% for California employers in general.

DOSH's "1998 Report" concluded that the targeting of establishments with elevated rates of workplace injuries and illnesses, and the application of consultation and inspection resources to those establishments, is an effective way to reduce injury and illness incidence rates and workers' compensation loss indicators.

Program Sunset

The statutory provision for the Targeted Inspection and Consultation Fund "sunset" on January 1, 1999, unless a later enacted statute deletes or extends the date.

Concern has also been expressed that with the program due to sunset, it is not stable and is hard to maintain and recruit trained personnel.

Loss Control Certification Unit

The Loss Control Certification Unit (LCCU) in the Division of Occupational Safety and Health (DOSH) certifies the loss control capabilities of insurers. The loss control certification program was created in January 1994, and began its fifth Annual Plan review year in April 1998. Approximately 104 workers' compensation carriers and carrier groups in California and about 270 total workers' compensation carrier companies are currently certified.

DOSH reports that their evaluations of insurers' Annual Loss Control Plans show that California workers' compensation insurers are making good faith efforts to understand and comply with the statutes and regulations governing the provision of loss control consultation services to their insureds. Plan evaluations also indicate that loss control consultants, both those working directly for the insurer and those under contract from outside sources, are in need of more training on specific provisions of the insurer's certified plans and the purpose of loss control regulations. In addition, some insurers are using selection methodologies for targeting their insureds which fail to identify effectively their insureds who have the greatest workers' compensation losses or the most significant preventable health and safety problems.

Ergonomics standard

A provision of the 1993 reform legislation required the Occupational Safety and Health Standards Board to adopt workplace ergonomics standards by January 1, 1995, in order to minimize repetitive motion injuries.

DOSH and the Cal-OSHA Standards Board have worked for years on modifications to Title 8, General Industry Safety Orders, Section 5110 of the California Code of Regulations to establish those "ergonomic standards." As shown in the timeline, such regulations were implemented, but are still subject to legal challenges and further court action.

The latest information on the status of the ergonomics standard may be obtained from the DIR web site at www.dir.ca.gov. (From the home page, select "Occupational Safety and Health", then "Cal-OSHA Standards Board", then "Ergonomics Standard.")

Ergonomics Standard in California: A Brief History

January 18 and 23, 1996

OSHSB holds public hearings on proposed ergonomics standards and receives over 900 comments from 203 commentors. The proposed standards are revised.

July 15, 1996

OSHSB provides 15-day public comment period on revisions to proposed standards.

July 15, 1996

California Labor Federation, AFL-CIO, and the American and California Trucking Associations file legal briefs with the Sacramento Superior Court in opposition to the ergonomics standard.

September 19, 1996

OSHSB discusses proposal at its business meeting and makes further revisions.

October 2, 1996

OSHSB provides a 15-day public comment period on the further revisions.

October 2, 1996

California Labor Federation, AFL-CIO, and the American and California Trucking Associations file legal briefs with the Sacramento Superior Court in opposition to the ergonomics standard.

November 14, 1996

OSHSB adopts proposal at its business meeting and submits it to the state Office of Administrative Law (OAL) for review and approval.

January 2, 1997

OAL disapproves proposed regulations based on clarity issues.

February 25, 1997

OSHSB provides 15-day public comment period on new revisions addressing OAL concerns.

April 17, 1997

OSHSB adopts new revisions and resubmits proposal to OAL.

June 3, 1997

Proposed ergonomics standard approved by OAL.

July 3, 1997

Ergonomics standard becomes effective.

September 5, 1997

Sacramento Superior Court hearing to resolve the legal disputes filed by labor and business industries

October 16, 1997

Judge Ford issues orders refraining OSHSB from giving legal force and effect to portions of the ergonomic standard.

December 12, 1997

OSHSB appealed Judge Ford's Order with their legal position that the Judge's Order would be stayed pending a decision by the Court of Appeal.

January 30, 1998

Judge Ford further ruled that his Order will remain in effect and not be stayed until the Court of Appeal hears the case.

March 13, 1998

In response to another appeal by the Standards Board, the Third District Court of Appeal overturned Judge Ford's January 30th ruling. Judge Ford's Order to eliminate parts of the standard will be stayed until the Court of Appeal issues a decision on the appeal filed in December 1997.

In the future...

Decision by Court of Appeal.

Industrial Medical Council

The Industrial Medical Council (IMC) regulates physicians, called Qualified Medical Evaluators (QMEs), who examine injured workers to evaluate disability and write medical/legal reports. These reports are used to determine an injured worker's eligibility for workers' compensation benefits in California.

The physician groups who may be QMEs include medical doctors, doctors of osteopathy, doctors of chiropractic, dentists, optometrists, podiatrists, psychologists and acupuncturists. The IMC helps educate the candidates, administers the QME competency exam, certifies qualified physicians to be QMEs and holds QME disciplinary proceedings when necessary.

The IMC also provides unrepresented injured workers with a 'panel' of three QMEs in a specialty of the worker's choice, regulates courses provided as continuing education for QMEs, provides advice to the Administrative Director of the Division of Workers' Compensation on medical fee schedule issues, regulates advertising by QMEs and investigates complaints about QME misconduct.

Since the IMC's creation in 1990, 6,447 QMEs have been certified. In the intervening years, many new eligibility requirements were added. By year-end in 1997, there were approximately 4,500 QMEs in active practice in California.

Of interest to treating physicians, the IMC adopted and will continuously update guidelines for treatment of common *industrial* injuries. Currently, treatment guidelines exist for treatment of low back problems, occupational asthma, contact dermatitis, post traumatic stress disorder, as well as for injury to the neck, shoulder, elbow, hand & wrist, and knee. These treatment guidelines are *advisory*, and intended to assist health care providers in the California workers' compensation community in making decision about appropriate medical treatment for specific industrial injuries. Using CQI (Continuous Quality Improvement) the IMC will periodically review, update and revise the treatment guidelines to reflect current medical practices. The text of each guideline is available on the IMC website, as well as upon request to the IMC office.

Treatment Guidelines

The Legislature directed the IMC to develop treatment guidelines, which reflect generally accepted practices of the health care community for common industrial injuries. To this end, during 1996 and 1997, the IMC obtained input and advice from hundreds of respected physicians and other providers who treat industrial injuries in California on the text of the guidelines. These guidelines reflect both an assessment of the scientific evidence on a topic and the level of medical provider consensus about the methods of assessment, treatment and diagnostic testing most often used to treat such injuries during the first 90 days. The workers' compensation community, including workers, employers, insurers and attorneys, were asked to comment on the guidelines before the final version of each was adopted.

Improving QME Report Quality

In 1996, the IMC staff designed a medical/legal report quality review system, in order to evaluate the quality of QME reports on both a random and “as referred” basis. The quality review first checks each report for the presence or absence of 25 essential elements. The next level of review evaluates the physician’s discussion of more complex subjects, including apportionment, subjective factors of disability, etc. The third level of review evaluates the QME’s adherence to the IMC’s disability evaluation guideline for that type of report. The IMC then sends the physician who wrote the report a letter congratulating the physician on passing the review, or summarizing the deficiencies and directing the physician to educational resources. When necessary, reports with egregious or unlawful problems are referred to the IMC discipline section. The IMC reviewed 558 reports in 1996, and 958 in 1997. The results of the review are reported annually to the Administrative Director and are available on the IMC’s web page.

QME Complaint Tracking and Discipline

The IMC Investigations Unit made a qualitative change in 1996 by hiring a Senior Special Investigator able to conduct in field investigations. The Investigations Unit uses the cross-disciplinary expertise of a supervising attorney, staff physician, investigator and support staff. The IMC established an ‘800’ number complaint hotline. Between July 1996 and June 1997, 1,004 complaints were logged into the complaint tracking database, six IMC investigations were referred to prosecutors in six different counties, four IMC investigations cases were referred to licensing boards or other agencies with jurisdiction, four QMEs were terminated, two QMEs were placed on IMC probation, two QMEs were suspended without probation.

The IMC met with other medical licensing agencies in the state to improve coordination among the agencies in the efforts to take action against physicians engaging in illegal or harmful conduct. During 1997, 610 complaint cases were opened and 150 investigations were completed.

Fee Schedule Advisory Committee Meetings

In response to the need to revise and update the Official Medical Fee Schedule and Medical/Legal Fee Schedule, the IMC assisted the Administrative Director of DWC obtain the broadest base of public input on changes to these fee schedules.

During 1996, the IMC hosted two statewide, public advisory committees, comprised of representatives of major payer and provider organizations. These committees, and their numerous subcommittees, met tirelessly over 11 months to review the fee schedule texts and hammer out clarifications and compromises designed to make the fee schedules clearer, more user-friendly, and more equitable. The consensus recommendations from these committees were to be sent to the Administrative Director for use in developing revised fees schedules, which were then to be circulated for public comment during 1998.

PROGRAM OVERSIGHT

Improving Quality - IMC Focus in 1998/1999

Having completed the foundation of its programs, the IMC's work is shifting to more focused program areas. In an effort to enhance the quality of medical evaluations, the IMC is expanding its educational work, increasing the number of medical/legal reports evaluated by the quality review, upgrading the QME certification process prior to appointment and reappointment, and expanding its Investigations Unit staff and resources.

Communication and education are keys to quality in both medical treatment and disability evaluations in the workers' compensation system. The IMC hosted the first Educational Conference for Treating Physicians in the fall of 1997. The one-day seminar presented the 'nuts and bolts' training needed by physicians to work effectively as treating doctors in workers' compensation. It also established a bench mark for other continuing education course providers.

Most of the IMC publications and forms were added to the IMC web page in 1997. The Council established a 'fax-on-demand' system to make IMC forms readily available to physicians and workers.

PROJECTS AND STUDIES

Introduction

In response to its Labor Code mandate, CHSWC has engaged in many studies to examine health, safety and workers' compensation systems in California. CHSWC has concentrated these efforts on areas that are most critical and of concern to the community.

CHSWC studies are conducted by independent researchers, under contract with the State of California. Advisory Committees, composed of interested members of the workers' compensation community and the public, provide comments, suggestions, data and feedback.

Studies were initially formed to evaluate changes to the system after the implementation of workers' compensation legislative reforms in the early 1990's and to assess the impact on workers and employers. While that focus continues, the scope of CHSWC projects has also evolved in response to findings in the initial studies, and to concerns and interests expressed by the Legislature and the workers' compensation community.



California Labor Code Section 77(a)

"The commission shall conduct a continuing examination of the workers' compensation system ... and of the state's activities to prevent industrial injuries and occupational diseases. The commission may contract for studies it deems necessary to carry out its responsibilities."

CHSWC projects have dealt with several major areas -- informational services to injured workers, alternative workers' compensation systems, anti-fraud activities, employers that are illegally uninsured for workers' compensation, the health and safety of young workers, and the impact of the reform legislation on the medical-legal process and the vocational rehabilitation program.

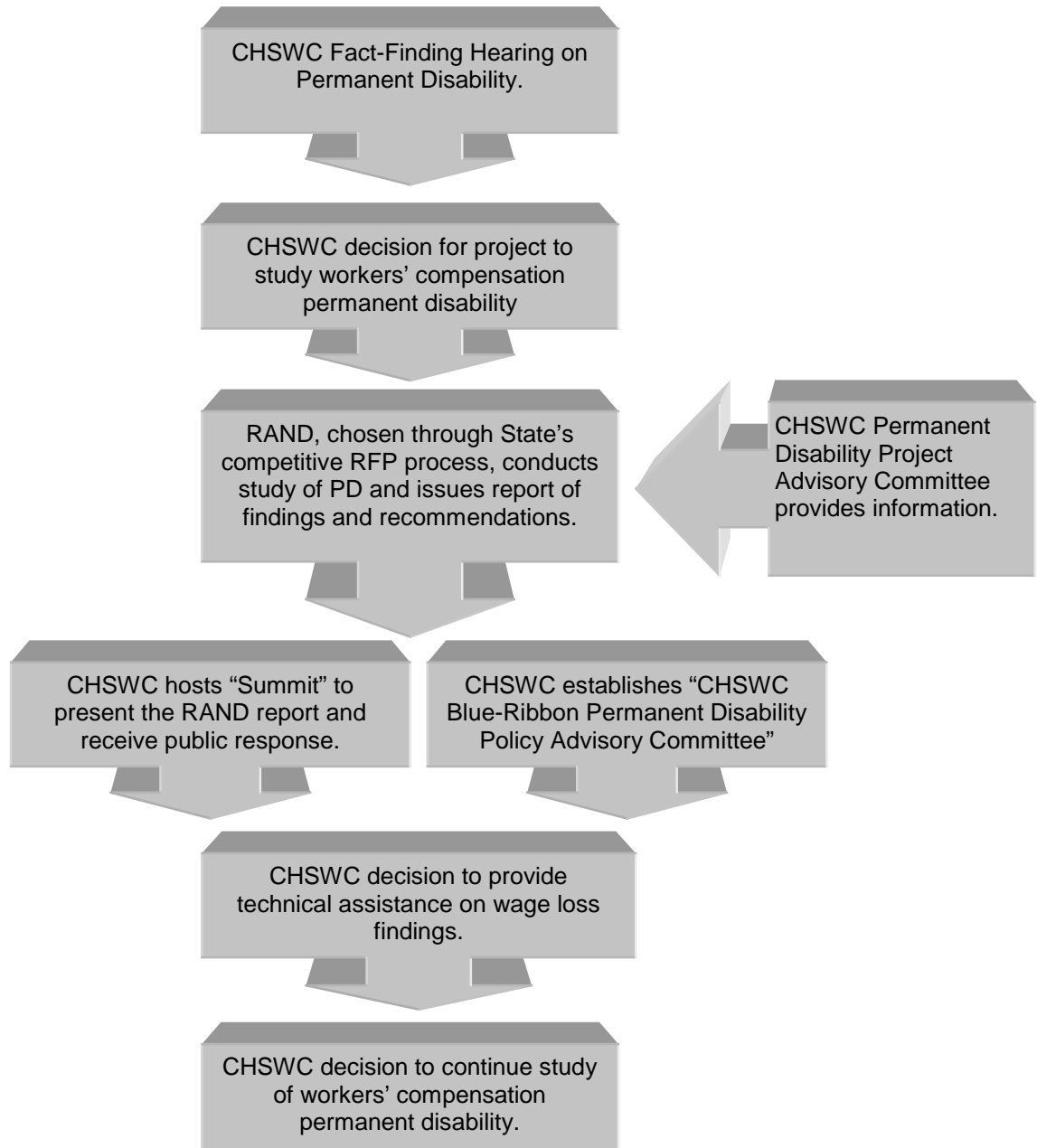
The most extensive and potentially far-reaching project undertaken by the Commission is the ongoing study of workers' compensation permanent disability in California. Incorporating public fact-finding hearings and discussions with studies by RAND, the CHSWC project is dealing with major policy issues regarding the way that California workers are compensated for permanent disability incurred on the job.

This section starts with a discussion of the permanent disability projects and continues with descriptions of CHSWC's other ongoing studies.

CHSWC's Evaluation of Permanent Disability: An Overview

CHSWC has engaged in a series of projects and studies in its ongoing evaluation of workers' compensation permanent disability.

The graphic below provides an overview of these activities and how they are interrelated.



Permanent Disability Project

Background

The Commission realizes that the rating of permanent disability is one of the most difficult tasks of the workers' compensation system, often leading to disputes and litigation.

The manner in which California rates and compensates injured workers for total and partial permanent disability has enormous impact on the adequacy of their benefits, their ability to return to gainful employment, the smooth operation of DWC's adjudication system and the cost of the workers' compensation system to employers.

At the urging of the community at a CHSWC Fact Finding Hearing in January 1996, the Commission chose to undertake a comprehensive study of workers' compensation permanent disability program and benefit. The California Industrial Medical Council (IMC) also participated in and contributed to this effort. The RAND organization was selected through the State's competitive Request for Proposals process.

Description

Commencing in 1996, RAND engaged in a comprehensive study of workers' compensation permanent disability. The purpose of the study was to evaluate how permanent disability benefits are currently determined and delivered in the California workers' compensation system. It examines the extent to which the current system meets the goals and objectives set forth in the California constitutional mandate and whether the system can be improved to meet these goals better. The IMC was interested in the nature of impairment and evaluation, particularly the relationship between vocational rehabilitation and permanent disability rating.

PD Study Advisory Committee

Mark Ashcraft
DIR Self-Insurance Plans

Christopher Ball
Rose, Klein and Marias

Dr. Doug Benner
Regional Occupational Health

Dr. Joseph Bernstein

Carlyle Brakensiek
CSIMS

Julianne Broyles
California Chamber of Commerce

Neil Burraston
California State Senate DIR

Otis Byrd
DWC Rehabilitation Unit

Sharon Collins
DWC Disability Evaluation Unit

Yvette De Lucia
Daugherty and Company

Kathy Dervin
DWC Research Unit

Thom Donnelly
Piledrivers Local 34

Jill Dulich
Marriott International

Joe Enos
UAW Local 2244

John Friedberg
East Bay RSI Support Group

Mark Gerlach
CAAA

Dorsey Hamilton
Compensation Alert

Ted Hanf
Kegel, Tobin & Truce/CWCDAAA

Philip Harber, MD, PhD
University of California, Los Angeles

Brian Hatch
California Professional Firefighters Union

Barbara Hester
California Assn. of Service Organizations
(continued on next page)

Status

RAND's preliminary findings and recommendations were submitted to CHSWC in a report entitled "Compensating Permanent Workplace Injuries: A Study of the California System", published in 1997.

PD Study Advisory Committee

(continued)

Lori Kammerer
Californians for Compensation Reform

Dr. Craig Little
California Chiropractic Association

Dr. D. Allan MacKenzie
Industrial Medical Council

Geri Madden
State Comp. Insurance Fund

Joseph E. Markey
California Self-Insurers Association

Blair Megowan
Disability Evaluation Unit

John Middagh
Walt Disney Company

Ira H. Monosson, MD
Industrial Medical Council

Theresa Muir
Southern California Edison

Nick Murphy
State Comp. Insurance Fund

Richard Pitts, DO
Industrial Medical Council

Diane Przepiorski
California Orthopaedic Association

Dr. Linda Rudolph
DWC Managed Care Unit

Pam Schroeder
Transamerica Corp

Barbara Shogren-Lies
CARRP

Dr. Gail Walsh
Industrial Medical Council

John Wilson
Schools Excess Liability Fund

Ed Woodward
California Workers Comp. Institute

Casey L. Young
Division of Workers' Compensation

Richard W. Younkin
Division of Workers' Compensation

Further Information

The preliminary findings and recommendations contained in the RAND publication are reviewed and discussed in the "Permanent Disability" section of this report.

An Executive Summary of the RAND report may be obtained at no charge by writing, faxing or phoning the Commission office. It is also available on the internet at **www.dir.ca.gov**.

Further information about the 1996 CHSWC fact finding hearing on Permanent Disability that led to the study may be found in the 1996-97 CHSWC Annual Report.

Next Steps

CHSWC held a public forum so that the workers' compensation community and all interested could comment upon the RAND report.

CHSWC PD Project Team

Mark Peterson, PhD
RAND

Robert T. Reville, PhD
RAND

Rachel Kaganoff-Stern
RAND

Peter Barth, PhD
University of Connecticut

Niklas Krause, MD, PhD, M.P.H.
UC Berkeley

Frank Neuhauser
UC Berkeley

CHSWC Public Forum: Summit on California Permanent Disability

Background

Under contract with CHSWC, the independent research organization RAND engaged in a comprehensive study of the workers' compensation permanent disability system in California.

RAND's report entitled "Compensating Permanent Workplace Injuries: A Study of the California System" was published in 1997.

Description

On November 21, 1997, the Commission hosted a public forum entitled "Summit on California Workers' Compensation Permanent Disability".

The purpose of the Summit was to bring together interested persons and representatives from the workers' compensation community in California and the nation to discuss and comment upon the preliminary findings from the RAND study of permanent disability.

The morning session consisted of a presentation of the preliminary findings by RAND project team members and comments from DIR and DWC.

Following a special luncheon panel chaired by Dr. John F. Burton, Jr., the afternoon session consisted of comments by representatives of the employer, labor, injured worker, attorney, insurer and medical communities.

Further Information

A summary of the public comments made at the Summit may be found in the "Permanent Disability" section of this report.

Next Steps

A new CHSWC Blue-Ribbon Permanent Disability Policy Advisory Committee, co-chaired by Commissioners Rankin and Vach, was established to review the RAND report and the community's responses, and recommend further action.

CHSWC Summit Hosts

James J. Hlawek
CHSWC Chairman
Commission Members
Christine Baker
CHSWC Executive Officer

RAND Report Presenters

Mark A. Peterson, PhD
RAND
Robert T. Reville, PhD
RAND
Rachel Kaganoff Stern
RAND
Peter Barth, PhD
University of Connecticut

Summit Luncheon Panel

John F. Burton, Jr., PhD
Rutgers University
Leslie I. Boden, PhD
Boston Univ. - Public Health
Peter Barth, PhD
University of Connecticut
James N. Ellenberger
*AFL-CIO Dept. of Occupational
Safety & Health*
Mary E. Garry
Hewlett-Packard Corporation

PROJECTS AND STUDIES

CHSWC Permanent Disability Policy Advisory Committee

Background

A new CHSWC Permanent Disability Policy Advisory Committee, co-chaired by Commissioners Rankin and Vach, was established to review the RAND report and the community's responses, and recommend further action.

Description

The CHSWC Blue-Ribbon PD Policy Advisory began meeting in November 1997 and continues to date.

The Advisory Committee reviewed the RAND report "Compensating Permanent Workplace Injuries: A Study of the California System".

The Policy Committee established the following policy goals:

1. Efficiently decrease uncompensated wage loss for disabled workers in California.
2. Increase the number of injured workers promptly returning to sustained work.
3. Reduce transaction and friction costs, including "costs" to injured workers.

Status

The CHSWC Blue-Ribbon PD Policy Advisory Committee urged the Commission to study those issues further.

Further Information

An overview of the activities, discussions and recommendations of the CHSWC Permanent Disability Policy Advisory Committee may be found in the "Permanent Disability" section of this report. Notices of the Committee meetings are posted on www.dir.ca.gov.

Next Steps

The CHSWC Blue-Ribbon PD Policy Advisory Committee determined that it needed additional information about some areas. Further study was advised.

CHSWC Blue-Ribbon Permanent Disability Policy Advisory Committee

Co-Chairs:

Tom Rankin, CHSWC and
California Labor Federation

Greg Vach, CHSWC and
Interstate Brands Corporation

Members:

Julianne Broyles
California Chamber of Commerce

John C. Duncan
Department of Industrial Relations

Brian Hatch
California Professional Firefighters

D. Allan MacKenzie, MD
Industrial Medical Council

Theresa Muir
Southern California Edison

Dianne Oki
State Compensation Insurance Fund

Merle Rabine
Calif. Applicants' Attorneys Association

Edward C. Woodward
California Workers' Comp. Institute

Casey L. Young
Division of Workers' Compensation

Project Team

Christine Baker
CHSWC

Robert Reville
RAND

Frank Neuhauser
UC Berkeley

PROJECTS AND STUDIES

Technical Assistance for CHSWC Blue-Ribbon Permanent Disability Policy Advisory Committee

Background

RAND's initial report, "Compensating Permanent Workplace Injuries: A Study of the California System", indicated that there was significant uncompensated wage loss for workers' suffering permanent disability.

The CHSWC Blue-Ribbon PD Policy Advisory Committee raised additional questions about the wage loss study and other areas of the RAND report.

The Commission voted to extend its contract with the RAND organization to provide technical assistance to the CHSWC Blue-Ribbon PD Policy Advisory Committee.

Description

This new project consists of five tasks:

1. Technical assistance for the Policy Committee
2. Assessment of included and excluded workers in wage loss study.
3. Data collection from self-insured employers.
4. Wage loss analyses of employees of self-insured employers.
5. Analysis of the impact of local economic conditions on wage loss and return to work.

Self-Insured Subcommittee

Mark Ashcraft
DIR Self Insurance Plans

Jill Dulich
Marriott International

Louisa Gomes
California Assn. of Service Organizations

Joe Markey
California Assoc. of Self Insurers

Theresa Muir
Southern California Edison

John Robeson
State Compensation Insurance Fund

Self-Insured Project Team

Christine Baker
CHSWC

Frank Neuhauser
SRC, UC Berkeley

Robert T. Reville
RAND

Status

The study was initiated in November 1997 and is ongoing.

Next Steps

A report is expected in the fall of 1998.

PROJECTS AND STUDIES

CHSWC Permanent Disability Study Continuation

Background

RAND's initial report, "Compensating Permanent Workplace Injuries: A Study of the California System", indicated that there was significant uncompensated wage loss for workers' suffering permanent disability.

The PD Policy Advisory Committee urged the Commission to study that and other issues further.

The Commission voted to continue the comprehensive study of workers' compensation permanent disability.

Description

Continuation of the permanent disability study will be conducted in three phases.

- Phase 1 - Return to Work Analysis
- Phase 2 - PD Schedule Revision
- Phase 3 - Analysis of wage loss and return-to-work in other states

The goal of the first phase of the study is to provide policymakers with all the information necessary to implement policies that encourage return-to-work, if such policies are found to be effective and valuable. The project will consist of three parts.

First, the study will estimate the value of improved return-to-work in terms of long-term uncompensated wage loss. While the impact of return-to-work programs on Temporary Disability costs are readily apparent and often estimated, the impact of improved return-to-work on long-term wage loss has never been estimated.

Second, the study will describe the programs used by California employers and identify the best practices encouraging return-to-work.

Third, a literature review and qualitative interviews will be conducted with selected administrators and firms in other states to assess the effectiveness of policies adopted by other states to encourage return-to-work.

CHSWC Blue-Ribbon Permanent Disability Policy Advisory Committee

Co-Chairs:

Tom Rankin, CHSWC and
California Labor Federation

Gregory Vach, CHSWC and
Interstate Brands Corporation

Members:

Julianne Broyles
California Chamber of Commerce

John C. Duncan
Department of Industrial Relations

Brian Hatch
California Professional Firefighters

D. Allan MacKenzie, MD
Industrial Medical Council

Theresa Muir
Southern California Edison

Dianne Oki
State Compensation Insurance Fund

Merle Rabine
Calif. Applicants' Attorneys Association

Edward C. Woodward
California Workers' Comp. Institute

Casey L. Young
Division of Workers' Compensation

Project Team

Christine Baker
CHSWC

Robert Reville
RAND

Frank Neuhauser
UC Berkeley

PROJECTS AND STUDIES

The second phase of the continuation of the PD study will consist of a detailed evaluation of the disability rating schedule in order to provide empirical findings that can guide a revision that will be consistent with the economic losses experienced by permanently disabled workers. As part of its research, the study will empirically identify the components of the schedule that contribute to inconsistency and make recommendations to reduce it. It will also analyze the usefulness of increased reliance on objective medical findings in disability ratings, including the extent to which such an approach can improve consistency and whether it can also improve the targeting of benefits.

The third phase will compare the wage loss experience of other states to the results for California. Estimation of the wage loss experience of other states can improve the ability to understand the causes of wage loss. Differences in wage losses across states can be analyzed so that reforms can be identified that will be effective. A focus of this analysis will be on differences across states in return-to work. In addition, the effectiveness of the policies of other states can be evaluated and the impact of other differences in the workers' compensation system can be examined

Study of DWC's Audit Function

Background

The Senate Industrial Relations Committee and the Assembly Insurance Committee jointly requested that the Commission undertake an evaluation of the effectiveness of the Audit Unit of the Division of Workers' Compensation.

Description

As requested by the Legislature, the Commission worked to develop recommendations:

- To make the DWC Audit program more effective.
- To determine whether or not the program is adequately staffed.
- To determine whether or not the penalty levels are adequate and/or appropriate to deter violations.
- To make the \$100,000 civil penalty for a pattern and practice of poor claims administration more effective.
- To consider whether or not the unfair claims settlements practice act (section 790.03 of the Insurance Code) should apply to workers' compensation.

Status

The CHSWC Audit Study Project team was formed to carry out the study.

As a result of the project team's analyses, a draft of the Audit Study report was prepared and submitted to the Commission members.

Proposals were made to address system shortcomings or failures. These include:

- Develop equitable selection process
- Improved targeting of poor performers
- Increased incentives for timely and accurate delivery of benefits
- Addressing systemic problems in benefit delivery that create problems for delivery by insurers and understanding by workers.

Audit Project Advisory Committee

Saul Allweiss
Republic Indemnity

Julianne Broyles
California Chamber of Commerce

Mark Gerlach
CAAA

Peter Gorman
Alliance of American Insurers

Mark Johnson
DWC – Audit Unit

Lori Kammerer
Californians for Compensation Reform

Joel Laucher
CDI Consumer Services Division

Joseph E. Markey
California Self-Insurers Association

Lisa Middleton
State Compensation Insurance Fund

Clea Powell
Kaiser Foundation

Frank D. Russo
California Applicants' Attorneys Assn.

Willie Washington
California Manufacturers Association

Mark Webb
American Insurance Association

Larry White
CDI Legal Division

Doug Widtfeldt
Assn. of Calif. Insurance Companies

Edward C. Woodward
California Workers' Comp. Institute

Casey L. Young
Division of Workers' Compensation

- Simplify Benefit Notice program.
- Improve audit function administration.

At its June 25, 1998 meeting, CHSWC deferred approval of the draft report until some of the recommendations were taken to a working group to be “fleshed out a bit more”. The project team is working with the community to develop detailed implementation plans.

Audit Project Team

Christine Baker
CHSWC

Frank Neuhauser
UC Berkeley

Charles Lawrence Swezey, Esq.
CHSWC Consultant

Marie Wardell
Consultant

Kirsten Strömberg
CHSWC

Evonne Jolls
CHSWC

Further Information

The report of CHSWC’s study of the DWC Audit function may be obtained at no charge by writing, faxing or phoning the Commission office. It is also available on the internet at www.dir.ca.gov.

Next Steps

A revised report is expected at the end of November 1998.

Workers' Compensation Information Prototype Project

Background

The CHSWC-sponsored study on "Information Services to Injured Workers" showed that workers need to know what the workers' compensation program is, what steps they need to take if an injury occurs, what they can expect in the process, and how they can receive information and assistance.

Description

The Commission undertook a project to develop prototype informational materials on the workers' compensation program, benefits, and procedures.

The Advisory Committee worked closely with the project team in creating and refining the informational materials. The Executive Committee reviewed and approved the materials before they were submitted to the Commission for final approval.

These materials, consisting of six fact sheets and a video, were designed to be utilized by employers, employee organizations, and any others in the California workers' compensation community.

The fact sheets are entitled:

- "What Every Worker Should Know"
- "After You Get Hurt on the Job"
- Temporary Disability Benefits
- Permanent Disability Benefits
- "For More Information"
- "Hurt on the Job? Information Alert for Teens"

The video follows the cases of three injured workers and describes the steps to take when an industrial injury takes place as well as available resources to get further assistance.

English versions of the fact sheets are available in both black and white and color. Spanish versions of the fact sheets are being developed.

Information Prototype Project Executive Committee

Tom Rankin
CHSWC

Gregory Vach
CHSWC

Casey L. Young
Division of Workers' Compensation

Information Prototype Project Advisory Committee

Julianne Broyles
California Chamber of Commerce

Thom Donnelly
Piledrivers Local 34

Joe Enos
UAW Local 2244

Mabel Fong
State Compensation Insurance Fund

Larkie Gildersleeve
Newspaper Guild Local 52

Luisa Gomes
Calif Assn. of Service Organizations

Dorsey Hamilton
Compensation Alert

Joan Lichterman
East Bay RSI Support Group

Marc Marcus
Calif Applicants' Attorneys Assn.

Landis Martilla
IBEW, AFL-CIO

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Status

This project was completed March 1998.

The materials have been distributed at several meetings and conferences, including:

Information Prototype Project Advisory Committee (continued)

Michael McClain
Calif Workers Comp Institute

Pete McMillan
CCR

Mark Miller
Calif Workers Comp Institute

Peter Robertson
*Associated General
Contractors of California*

Frank Russo
CAAA

Willie Washington
Calif. Manufacturers Assn.

Bob Wong
DWC, Information & Assistance

Information Prototype Project Team

Christine Baker
CHSWC

Juliann Sum
LOHP, UC Berkeley

Laura Stock
LOHP, UC Berkeley

Evonne Jolls
CHSWC

DWC Educational Conference - Oakland and
Burbank

California Labor Federation, AFL-CIO Conference

Disability Management Employer Coalition
Conference

California Applicants' Attorneys Association
Conference

California Workers' Compensation Institute
Committee meetings

Injured worker groups

Workplace Violence Task Force meeting

Hotel Restaurant Employees Local 2

Oakland Chinese Community Council welfare-to-work
class

Further Information

These informational prototype materials may be obtained at no charge by writing, faxing or phoning the Commission office. The fact sheets are also available on the internet at **www.dir.ca.gov**

For further information about the CHSWC study on the injured worker experience which led to the development of the prototype informational materials, see the 1996 project report entitled "Navigating the California Workers' Compensation System", available from CHSWC and on the internet.

Next Steps

Under contract with CHSWC and with the cooperation of the workers' compensation community, LOHP will design a return to work fact sheet to accompany the six injured worker fact sheets. In addition, the format of the existing factsheets will be improved and the information updated. LOHP will also inform employers how to use the material to fulfill legal obligations to inform workers of their rights.

Study of Incomplete Physician Reports

Background

Incomplete physician reports have been cited as a major factor leading to inconsistency in permanent disability ratings. Many of DWC's disability evaluators have said that their largest problem with the current system is the poor quality of medical reports that have been submitted to them for rating.

Description

The Commission has undertaken a study to:

- Determine the nature and magnitude of the problem;
- Ascertain who is producing incomplete reports and why;
- Develop quantitative analysis
- Provide recommendations for improving the quality of reports;
- Calculate the cost-benefit obtained from the system.

Incomplete Physician Reports Advisory Committee

Blair Megowan
DIR Disability Evaluation Unit

Ann Searcy, MD
Industrial Medical Council

Incomplete Physician Reports Project Team

Frank Neuhauser
SRC, UC Berkeley

A random sample of medical reports was drawn from the DWC Disability Evaluation Unit and evaluated by the project team and representatives from the Industrial Medical Council. The costs of the reports were estimated separately using data from bill review companies or carriers.

Status

This project is in process.

Findings

Preliminary findings indicate that

- Physician reports are of a poorer quality. However, QME reports exhibit many of the same problems, though less frequently.
- Approximately 60% of the treating physician reports were subject to qualifications by the rater or, in other words, the reports were incomplete in some way. With QMEs, only 40% were subject to qualification. There is still a problem with the QME reports but it is more serious for the treating physicians.

PROJECTS AND STUDIES

- Approximately 50% of the submitted reports are from treating physicians. One-third of these treating physicians were registered QMEs.
- In approximately 20% of the reports submitted as QME reports, the doctor was not listed by the IMC as Qualified Medical Examiners.

Further Information

The study report will be available in the fall of 1998.

California Study Group on Young Workers' Health and Safety

Background

Every year about 70 adolescents die from work injuries in the United States and approximately 70,000 are injured severely enough to require treatment in hospital emergency rooms. Most of these injuries are preventable.

Description

To address this issue in California, the Commission convened a statewide Study Group on Young Workers' Health and Safety. The Study Group brings together key representatives from government agencies and statewide organizations that are involved with California youth employment and education issues.

The purpose of the Study Group is to identify potential strategies to:

- Reduce work-related injuries and illnesses among youth in the California workforce;
- Foster awareness and skills in safety and health that will remain with youths throughout their working lives, and allow them to take an active role in shaping safe work environments;
- Promote positive, healthy employment for youth.

Status

The Study Group was established in 1996 and has been funded by the Commission through 1998.

Findings

The Study Group issued a report in March 1998 containing recommendations for

- School-based strategies
- Strengthening the role of Work Permits
- Workplace initiatives

Young Workers' Health & Safety Advisory Committee

Toni Adams
Oakland Private Industry Council

Dr. Joseph Barankin
California Dept. of Education

Sharon Brunson
US Dept. of Labor

Lula Calkins
California Association of Work Experience Educators

Davis Campbell
California School Boards Association

John Cottingham
Industry Education Council of California

Dan Cornet
DIR Labor Commissioner's Office

Linda Delp
UCLA-LOSH

Tom Edminister
California Federation of Teachers

Walter Graze
Cal/OSHA

Paul Gussman
California Dept. of Education

Robert Harrison
California Dept. of Health Services

John Howard
DIR DOSH

Robert Kean
State Compensation Insurance Fund

Denise Legrande
18th District PTA

Mike Mortell
DIR, DAS

(continued on next page)

**Young Workers' Health & Safety
Advisory Committee**
(continued)

George Moton
California Apprenticeship Council

Mary Nielsen
California State PTA

Billie Barker
Employment Development Dept.

Bob Reeves
California Chamber of Commerce

Ron Selge
California Community College

Nancy Steffan
DIR- DLSE

Kathleen Summerill
Dept. of Health Services

Jan Vach
*California Association of Work
Experience Educators/Career
Awareness Center*

Luis Vergara
Youth Radio

**Young Workers' Health & Safety
Project Team**

Christine Baker
CHSWC

Robin Baker
LOHP, UC Berkeley

Diane Bush
LOHP, UC Berkeley

Evonne Jolls
CHSWC

- Strategies for enforcement agencies
- Raising public awareness
- Further research

Further Information

The study report entitled "Protecting and Educating California's Young Workers" is may be obtained by calling, faxing or writing the Commission. The report is also available on the internet.

Next Steps

In its continuing effort to improve education and protections for young workers, the Commission will contract with the Labor Occupational Health Program to explore the following three areas recommended by the Study Group.

- California Resource Center on Young Worker Health and Safety - A Resource Center to collect and provide information and material
- Public Awareness Campaign - A campaign to focus attention on young workers' rights, protections and responsibilities.
- Series of Joint meetings of Enforcement Agencies - Convene and facilitate a series of two to four meetings for various enforcement agencies that protect young workers to explore the strategies developed by the Youth Work Group, a working group funded by the Commission.

Vocational Rehabilitation Study

Background

In 1995, the Commission initiated a project to determine the impact of the workers' compensation reform legislation on the workers' compensation vocational rehabilitation program.

Description

The primary objective was to measure the impact of the reform changes on the vocational rehabilitation program.

A model was developed to get baseline information that will provide comparative data in future years regarding the number of workers undergoing vocational rehabilitation, the duration and costs of rehabilitation programs and services and the results produced by those programs and services.

Questions being addressed include:

- Did the reforms reduce the costs of the VR benefit for employers?
- How have changes affected outcomes for injured workers?

Status

The Vocational Rehabilitation project was initiated in 1995 and is ongoing. The Commission has funded the project through 1998.

An interim study report entitled "Vocational Rehabilitation Benefit: An Analysis of Costs, Characteristics, and the Impact of the 1993 Reforms" was published in August 1997.

Findings

Preliminary findings indicate that the cost of the vocational rehabilitation benefit declined by \$274 million (49%) between 1993 and 1994.

The decline in average cost per VR claim appears to be equally dramatic, dropping 45% from about \$13,000 to just over \$7,000.

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Return-to-work outcomes and post-injury earnings for injured workers seem to have worsened. Twenty percent of those injured workers receiving vocational rehabilitation services never return to work, while 30% of those are currently not working.

Further Information

A copy of the interim study report may be obtained by calling, faxing or writing the Commission and is also available on the internet.

Next Steps

A final report is expected at the end of 1998.

Literature Review of “Modified Work”

Background

CHSWC and the Industrial Medical Council jointly initiated a project for a literature review regarding the impact of modified work offers on the return to work outcomes of injured workers.

Some employers offer modified work to facilitate early return to work for temporarily or permanently disabled workers.

Description

Although many experts in the field regard modified work as a cornerstone in the rehabilitation process, little is known about the availability, structure, effectiveness and efficiency of modified work programs.

The objective of this literature review is to synthesize and critically appraise the scientific evidence in these four areas.

Status

The literature review of modified work has been completed.

A report entitled “Does Modified Work Facilitate Return to Work for Temporarily or Permanently Disabled Workers?” was published in August 1997.

Findings

The main finding of this review is that modified work programs are both effective and economically feasible. Injured workers who are offered modified work programs return to work about twice as often as those who are not offered such programs. However, methodologically more rigorous studies are needed to determine the magnitude of cost-savings and which program elements are most effective.

Further Information

A copy of report may be obtained by calling, faxing or writing the Commission and is also available on the internet.

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PROJECTS AND STUDIES

Medical-Legal Study

Background

Reform legislation changes to medical-legal evaluations were intended to reduce both the cost and the frequency of litigation, which drive up the price of workers' compensation insurance to employers and lead to long delays in case resolution and the delivery of benefits to injured workers.

In 1995, the Commission initiated a project to determine the impact of the workers' compensation reform legislation on the workers' compensation medical-legal evaluations. CHSWC contracted with the Survey Research Center at UC Berkeley to carry out this study.

Description

The study analyses are based upon the Permanent Disability Claim Survey, a set of data created each year by the Workers' Compensation Insurance Rating Bureau (WCIRB) at the request of the Legislature to evaluate the 1989 reforms. The WCIRB data summarizes accident claim activity, including such measures as degree of impairment, the type and cost of specialty exams, whether the case was settled and, if so, the method of settlement employed.

Status

The Medical-Legal study was initiated in 1995 and is ongoing. The Commission has funded the project through 1998.

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Findings

The study determined that

- the cost of medical-legal exams has declined dramatically since its peak in the 1991 accident-year.
- The number of partial permanent disability claims decreased significantly.
- The average cost of medical-legal exams has declined.

Further Information

See the study reports entitled "Evaluating the Reforms of the Medical-Legal Process" for details of the medical-legal study methodology and findings. The first year report was published in July 1996, the second year report in July 1997 and the third year report is expected in summer of 1998. Please note that later reports incorporate and update the data presented in previous reports.

PROJECTS AND STUDIES

“Carve Outs” – Study of Alternative Dispute Resolution Systems

Background

The 1993 reform legislation enabled the California construction industry to collectively bargain for alternative workers' compensation programs, also known as “carve outs”. The Commission contracted for an independent, outside study of the carve-out programs in California.

Description

This independent study involves several concurrent efforts. Each of these efforts is meant to inform carve-out participants and other interested parties about the advantages and problems associated with these experiments in alternative dispute resolution and efforts to speed benefit delivery to workers. Much of the early research on carve-outs suggested that these alternatives saved employers substantially on workers' compensation costs while reducing the level of litigation. However, there was considerable concern within the community over the protection of workers' rights and benefits.

Administrative Survey of Carve-outs

All carve-out agreements were reviewed and the principal administrator for each program was interviewed concerning a number of important issues including length of medical control, construction of medical provider lists, restrictions on medical-legal evaluator lists, alternate dispute resolution processes, access of workers to legal representation, participation rates among eligible employers, costs of administration, and level of litigation.

Case Studies

Drawing on the information from the Administrative Survey, two case studies are being conducted. The two carve-outs were selected based on two separate models of employer/union negotiation. One study was selected as a large project ‘wrap-up’ arrangement where a single owner negotiated an agreement with all trades involved in the project. The other study examines the experience of an agreement between an association of many employers and a number of union locals representing only a single trade. Each of these carve-outs was the subject of extensive interviews of many participants including

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employers, union leaders, workers, ombudspersons, mediators, arbitrators, medical providers, claims administrators, insurers, safety personnel and negotiators for both sides.

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*Analysis of Alternate Dispute Resolution/
Survey of Ombudspersons*

An analysis of the structure and functioning of the ADR process was conducted for all operating carve-outs. This involved analysis of documents and agreements, site visits, numerous interviews with participants, and a telephone and written survey of all current ombudspersons. These analyses focus on the way in which the ADR structures and implementation may affect the independence of the ombudspersons, the fairness of the process, and the protection of the rights of workers and employers.

Quantitative Methodology

Carve-outs are a new innovation and data is limited. This part of the project focuses on the development of a methodology to reliably evaluate the impact of carve-outs on the costs to employers, litigation rates, and impact on worker benefits. The object is to develop reliable methods that can be implemented with currently collected data, reproducible in other jurisdictions, and straightforward to apply and interpret. In addition, these methods are being applied to the data available from the two case studies. The data from these carve-outs is the most extensive and most mature.

Status

The first phase of the carve-out study was completed in March 1998. The second phase is anticipated to be completed in September 1998.

A presentation entitled "California Carve-outs: Preliminary Findings" was given to CHSWC at its meeting in April 1998.

Findings

The study determined that while early data reported by DWC suggested that carve-outs resulted in substantial savings on both medical and indemnity costs, precipitous drops in

litigation, and possible marked improvements in safety, these conclusions were drawn from limited data. As a result, that data may also have been misinterpreted.

Litigation rates on further evaluation appear similar between both systems, at least at this early stage. The number of claims resulting in some form of dispute resolution, a mediation or arbitration under a carve-out or a mandatory settlement conference or hearing in the statutory system were similar. The same is apparently true for the portion of seriously injured workers that are represented by an attorney.

Early data from the quantitative evaluation, currently in process, indicates that both medical and indemnity costs have declined for carve-out employers, but this decline mirrors a similar decline for noncarve-out employers, reflecting a general improvement in the California workers' compensation environment since the early 1990's.

Part of the reason that the carve-outs may have produced less dramatic savings than earlier predicted may be because the ADR processes and medical and medical-legal provisions are still evolving towards a best practice. With improvements in implementation, it is anticipated increased savings will occur. The final report will make a number of recommendations on how these processes could be constructed to create maximum benefits for unions and employers.

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Further Information

The study report entitled "California Carve-outs: Sea Change or Incremental Change?" will contain details of the carve-out study methodology and findings. This report will be available in September of 1998.

This report may be obtained by calling, faxing or writing the Commission. The report is also available on the internet at www.dir.ca.gov.

PROJECTS AND STUDIES

Project on Illegally Uninsured Employers

Background

In February 1997, the Commission conducted a public fact-finding hearing on workers' compensation anti-fraud activities and determined that some employers do not comply with the requirement to secure workers' compensation coverage for their workers.

Commission staff and a research team developed an issue paper containing recommendations to identify illegally uninsured employers and bring them into compliance. This is intended to provide proper workers' compensation coverage for workers, to reduce the cost to the state's Uninsured Employers Fund and General Fund, and to level the economic playing field for insured employers.

The Commission then voted to follow through on those recommendations for legislative changes and potential pilot projects to reduce the number of illegally uninsured employers.

Pilot Projects

This endeavor consists of three pilot projects designed to identify illegally uninsured employers and bring them into compliance. Each pilot project targets a specific group of employers.

Pilot 1

The first pilot follows-up on a sample of experience-rated employers that failed to identify policy coverage when notified by the WCIRB. Each employer that failed to respond was matched to EDD records of reported wages. In April 1998, fifty-eight apparently uninsured employers with reported wages have been referred to DLSE for follow-up notification and investigation. This pilot concentrated on a sample of employers whose X-mod calculations were performed during April 1997.

Pilot 2

The second pilot targets several industries that are responsible for a disproportionate demand upon the state General Fund through claims to the UEF. These industries are also suspected of high rates of noncompliance with the requirement to secure payment of compensation. Using specific industries (Auto/Truck Repair,

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Restaurants/Bars), EDD created random samples of 250 employers in each targeted industry based on primary SIC code. In addition, a random sample of 250 firms was drawn from all other employers. The WCIRB has matched these employers to policy information. During April and May of 1998, the WCIRB notified each employer with apparent lapses in coverage or for whom coverage cannot be determined, requesting an explanation for current or historical lapses in coverage. DLSE will follow-up with employers who fail to respond or fail to adequately demonstrate insurance coverage. These employers will be notified of a time to present information at the local DLSE office demonstrating current and past insurance coverage. It is estimated that DLSE will follow-up on approximately 120 employers under Pilot 2.

Pilot 3

Pilot 3 will test methods of improving new employers' knowledge of the need for compensation coverage and identification of new employers who willfully avoid compliance. Information received from other states indicates that 40% of new employers fail to secure payment of compensation. Efforts by other states have also been very successful at bringing new employers into compliance.

EDD drew a sample of 350 new employers who reported wages for the first time in the second quarter of 1997. Each of these employers will be matched to policy data by the WCIRB. All apparently uninsured employers would be sent a copy of the notification that will appear in EDD's "California Employer's Guide" with a request to identify policy information or reason that insurance is not required.

A second notice will be sent to all employers who do not respond. This notification will reiterate the requirements for insurance, remind the employer that lack of coverage is a crime, and inform the employer that if policy information is not returned, the employer's identity will be turned over to DLSE for follow-up which can result in penalties of up to \$10,000 per employee.

If no response is received to the second notice, DLSE will follow-up in the same manner as the targeted employers in Pilot 2. It is expected that DLSE will follow-up on approximately 65 employers under pilot 3.

Status of Pilot Projects

The Department of Industrial Relations has embraced the Commission's project on illegally uninsured employers and is carrying it forward as its "Operation Insure".

The illegally uninsured employer pilots have been proceeding rapidly with the assistance of the WCIRB and DLSE. The results to date suggest that the percentage of employers that are operating without compensation coverage may be significant.

Findings

Preliminary findings indicate that this interagency proactive effort may be the most effective way of identifying employers illegally uninsured for workers' compensation and bringing them into compliance.

Legislative Roundtable

CHSWC established a Legislative Roundtable and a Subcommittee to develop and review proposed legislation.

The proposal would authorize the DIR director to assess a penalty of \$1,000 per employee if it is determined that an employer has been illegally uninsured for a period in excess of 10 days during the calendar year preceding the determination.

The proposed language was incorporated into Senate Bill 924, introduced by Senator Hilda Solis.

Further Information

The Report on the CHSWC Public Fact-Finding Hearing on Workers' Compensation Anti-Fraud Activities discusses the problem of illegally uninsured employers.

The Issue Paper on Illegally Uninsured Employers outlines the recommendations for the pilot programs and proposed legislation

The reports on the three pilot projects described above are expected in October 1998.

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PROJECTS AND STUDIES

CHSWC Roundtable on DWC Lien Workload

Background

One of the most persistent administrative problems facing the Division of Workers' Compensation in recent years has been the development of a backlog of lien claims at some DWC district offices. CHSWC reported on this lien situation in its 1995-96 Annual Report and the recent visits to the Los Angeles, Santa Ana and Van Nuys offices have confirmed that the problem continues.

Commission staff found that in many instances, liens for payments made over 10 years ago were being filed on workers' compensation cases. In other instances, liens on the same case are not being heard at the same time, leading to costly notification and scheduling, churning of cases and delays in resolution.

It is reported that in newer cases, many of the lien claimants are not receiving proper notice of upcoming hearings, primarily due to the delegation by DWC of the responsibility for issuing the hearing notice to the parties.

Description

This Commission convened a Lien Workload Roundtable of interested members of the Workers' Compensation community. The Lien Roundtable is discussing a proposal developed by CHSWC staff containing legislative and administrative recommendations to address lien issues.

Status

This project is ongoing. CHSWC and DWC are in the process of collecting data from district offices on the nature and extent of the problem.

Findings

There appears to be an ongoing lien problem in the Division of Workers' Compensation and a potential for continuing backlogs.

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An additional concern is whether or not DWC can handle these liens, given that they will take up a significant amount of court time.

Next Steps

CHSWC plans to collect data from the DWC district offices regarding frequency and reasons for lien adjudication filings.

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Benefit Notice Simplification

Background

When an employee files a claim for worker's compensation, the employer or insurer is responsible for communicating the status of the claim to the employee by means of a series of benefit notices. The benefit notice system, which is administered by the DWC, has undergone several changes over the past decade.

The benefit notice system has been cited as confusing and ineffective by the workers' compensation community.

Description

This project will:

- identify benefit notice problems that contribute to problems with claims,
- develop criteria to improve benefit notices,
- identify requirements that cause the greatest problems with benefit notices, and
- identify steps to examine and address these requirements.

Status

The benefit notice project is expected to start in October 1998.

PROJECTS AND STUDIES

PERMANENT DISABILITY EVALUATION

Introduction

The manner in which California rates and compensates injured workers for total and partial permanent disability has enormous impact on the adequacy of their benefits, their ability to return to gainful employment, the smooth operation of DWC's adjudication system and the cost of the workers' compensation system to employers.

The permanent disability component of California's workers' compensation system has been an ongoing focus of concern and debate within the community for many years.

Since 1995, CHSWC has engaged in several projects in its ongoing evaluation of permanent disability, all of which are outlined in the "Projects and Studies" section of this report. CHSWC's responsibility to review and approve revisions to the Permanent Disability Rating Schedule, pursuant to California Labor Code Section 4660(d), is discussed in the "Program Oversight" section of this report. This section discusses CHSWC's ongoing evaluation of workers' compensation permanent disability commencing with the initial RAND study.

Background

Under contract with CHSWC, the RAND Corporation conducted a major study of permanent disability and issued a report containing findings to date, analyses and potential alternatives.

CHSWC then hosted a public forum entitled "Summit on California Workers' Compensation Permanent Disability", which brought together interested persons and representatives from the workers' compensation community in California and the nation to discuss and comment upon the RAND report.

This section of the CHSWC Annual Report encompasses

- a summary of the methodology, findings, and recommendations of the RAND study,
- an overview of the comments received at the Summit regarding the RAND methodology, findings, and recommendations
- a discussion of the activities of the CHSWC Permanent Disability Policy Advisory Committee
- a description of the project to extend the RAND study
- a discussion of the activities of the Commission as it continues its evaluation of workers' compensation permanent disability.

RAND Study of Permanent Disability

Methodology

RAND evaluated California's workers' compensation permanent disability system using multiple research methods including

- qualitative interviews of system participants and stakeholders,
- reviews of pertinent literature and recent development in the treatment of permanent partial disability (PPD) claims in other states,
- statistical analyses of major databases, and
- a "wage loss" study of the economic implications of a permanently disabling workplace injury.

In the wage loss study, RAND measured wage loss after injury as a proxy for the injured worker's reduced ability to compete in an open labor market. They also evaluated the adequacy of workers' compensation benefits by the fraction of wage loss replaced.

To estimate the amount of wage loss sustained by injured workers, RAND studied a sample of workers' compensation claims that had a PPD rating filed during 1991-1993 at insured firms. These claims were linked to quarterly wage data for the claimant using data maintained by the Employment Development Department. The post-injury earnings of those workers were compared with earnings of matched "controls" (workers with wages similar to the injured worker's pre-injury wages, working at the same firm at the same time) to measure wage loss. Wage loss was compared to benefits paid to determine to what extent the permanent disability benefit replaced the wage loss.

Major Findings

Community Viewpoints

From the qualitative interviews with stakeholders and system participants, RAND concluded that:

- California's workers' compensation system is large, complex and litigious.
- Most agree that the major reforms of 1989 and 1993 have generally improved the system, though serious problems linger.
- Many participants feel that the system remains overwhelmed with claims.
- Participants believe that many physicians are not well prepared to evaluate industrial injuries.
- The PPD rating is the source of many disputes.
- Views of the disability rating process diverge sharply.

Wage Loss Study Determinations

The wage loss study found that:

- PPD claimants experience large and sustained wage losses over the five years following their injury.
- PPD claimants experience significantly more time out of work than their controls.
- After initial return-to-work, claimants continue to experience decreased labor force participation.
- Depending upon how much of the time out of work after the injury is included in the wage loss calculation, the wage loss experienced by claimants is at least 20 percent, and may be as high as 40 percent.
- Total benefits (including TTD [temporary total disability], PPD [permanent partial disability] and VRMA [vocational rehabilitation maintenance allowance]) compensate 40 to 50 percent of wage loss.

RAND suggested that long-term wage loss is the best ex post measure of the “loss of ability to compete in the labor market,” which is the statutory goal of PPD indemnity. Therefore, they evaluated the “validity” of disability rating by comparing the rating to wage loss. They also compared ratings for the same injuries in two databases in order to evaluate the “consistency” of ratings. They found that

- For low-rated claims, the rating tool does not allocate benefits equitably because those with ratings from 1% to 25% have similar long-term wage loss but very different benefits.
- The lowest-rated claims (with ratings of 1% to 5%) have wage replacement of only 10 to 12 percent.
- Ratings are inconsistent, particularly for low-rated claims, which may account for the poor relationship between ratings and wage loss.

Low Rated Claims

Low-rated claims, for which many of the problems were identified, dominate the system. RAND showed that California’s PPD system is overwhelmingly a system for dealing with “minor” disabilities (those with a rating of 25% or under), which account for 90% of claims, 80% of medical costs, 70% of indemnity, and 60% of legal fees.

System Delays

RAND also documented a system with considerable delays. Even low-rated claims, for which less is at stake, experience considerable delays.

RAND's Policy Recommendations

As a result of the analyses in the report, RAND suggested the following reforms:

- Establish a task force to improve the PPD ratings process and the disability schedule.
- Revise the PPD schedule based on a wage loss approach.
- Review strategies for increasing return to work.
- Improve the consistency and predictability of the rating process.
- Develop methods for the electronic filing of documents.
- Implement an elective fast-track system for compensating minor PPD claims.
- Develop and distribute a database on closed PPD claims.

CHSWC Summit on Permanent Disability

On November 21, 1997, CHSWC hosted a public forum entitled "Summit on California Workers' Compensation Permanent Disability". The Summit brought together interested persons and representatives from the workers' compensation community in California and the nation to discuss and comment upon the RAND report.

Special Note: Time did not permit members of the community to do a complete review and analysis of the study report before the Summit. It is understood that comments and opinions expressed at the Summit are subject to subsequent modification or enhancement.

Overall Reaction to RAND Report

The community indicated that the RAND study report was important and useful.

The study approach including the utilization of controls was endorsed by the academic sector and accepted by the community as a good basis to continue analysis of the system.

However, the community was clear that further clarification and explanation of RAND study's methodology and findings would be helpful, and they were concerned about the implications of limitations in the data and methodology for the findings. In addition, they did not necessarily agree with all of the recommendations. Therefore, the community urged a continuing evaluation, with refinements to the methodology and the data.

Community Concerns about Methodology

The following questions and concerns were raised about the study methodology:

Working Assumptions

- Some were concerned that the RAND study, by use of wage loss as a proxy, makes the assumption that permanent disability is to replace wage loss, instead of as a remedy to compensate for a decreased ability to compete in the open labor market.
- One community member pointed out that the RAND study does not take into account that California provides PPD benefits to a much greater proportion of injured workers than other states. California in essence provides a lower PPD benefit than most other states but provides the benefit to more injured workers. He believes this an important policy issue that should not have been ignored in the analysis.

Controls

To measure wage loss, the study matched each injured worker with another worker in the same firm with similar wages as a control.

The community was concerned that several other characteristics, which may serve to predict wage loss, were omitted. These include:

- Occupation
- Type of job
- Tenure
- Performance Levels
- Age
- Education
- Litigated vs. accepted claim

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California Orthopaedics Association

Self-Insured Employers

Concerns were expressed that the wage loss findings may have been overstated because the study included little data about the experiences of injured workers of self-insured employers. A large segment of the California workforce – between one-quarter and one-third – is employed by self-insured employers. These are typically large employers that are relatively more successful at getting people back to work after injury. Such employers may also provide additional benefits to their injured employees.

Other Injured Worker Losses

Other losses sustained by workers as a result of injury were not within the scope of the study. Omission of these may serve to understate the total consequences sustained by injured workers. Such factors include:

Wage losses beyond five years

Non-Salary Benefits

- Health Care Coverage for worker and dependents
- Pension and retirement accruals
- Sick leave
- Vacation
- Overtime pay
- Holidays
- Other insurance: temporary disability, long-term disability

Quality of Life Issues

- Opportunities for future
- Self-identity and self-esteem
- Pain and suffering
- Family, church, community

Injured Workers not Stakeholders

Concern was expressed that injured workers were not afforded the opportunity to participate directly in the study. Consequently, the study did not have the benefit of injured workers' comments on their experiences with the permanent disability benefit and system. Although the study incorporated findings from the CHSWC-sponsored study of injured workers by the University of California's Labor Occupational Health Program, injured workers were not interviewed as were other community representatives.

1991-1993 was an Atypical Economic Period

The 1991-1993 study period was during a severe recession in the California economy, which may have affected the wage loss results.

- Some workers may have left the state and had earnings in other states which perhaps were not included in the calculations.
- It is not known whether injured worker would be able to find employment or be employed at higher rates in a different economy.
- Perhaps injured workers would have been laid off anyway due to lessening business demands.
- Most of the cumulative injury claims during that period were from workers who were out of the labor force at the time they filed the claim.
- Most of the wage loss was measured prior to the effects of the 1993 reforms, including the return to work provisions.

Temporary Disability Benefits

The study analysis included temporary disability benefits as well as permanent disability benefits. The observation was made that removal of temporary disability benefits from the analysis would enable permanent disability to be examined more purely.

Vocational Rehabilitation

It was noted that the study was silent on the role and effect of vocational rehabilitation in assessing and mitigating permanent disability.

“Horizontal Equity”

The study did not address the issue of “horizontal equity”. That is, among injured workers with the same permanent disability rating, what variability is there in earnings replacement rates?

Small Employers

The small employers were not included because there was not a control group available. The study could pool some of the smaller employers to obtain controls.

Tax Issue

Concern was expressed that RAND did not take into account the fact that indemnity benefits paid to injured workers are not taxed. The wage loss estimates should be recalculated with this factor.

Community Reaction to Findings

Many of the study findings were anticipated – the community has long been aware that California's workers' compensation system is complicated, litigious and plagued with delays in the provision of benefits. However, the findings of the wage loss study appeared to take most everyone in the community by surprise.

While there was general acceptance for the overall finding of significant wage loss for all disability ratings, because of the methodological concerns discussed above, the community urged that the methodology be refined and further study of wage loss be undertaken.

Some in the community expressed the opinion that the RAND study determined that the permanent disability benefit levels were too low and urged that they be increased substantially and immediately. Others urged further study to refine the wage loss determinations before proceeding with a benefit increase.

The community also urged that consideration be given to studies of other problematic areas of the workers' compensation system, including delays in the provision of benefits and in the medical treatment of injured workers.

Community Response to RAND Recommendations

Revise PD Schedule

RAND recommends revision of the rating tool to yield consistent ratings and to improve validity. They recommend revising the schedule so that, on average, ratings are consistent with wage losses.

Many have expressed confusion over the use of the term "wage loss." RAND is not advocating a "wage-loss system," where benefits compensate actual wage losses. The proposed revised permanent disability schedule would be based on predicted wage loss, so that disability would continue to be compensated based on a schedule.

The community expressed interest but urged that the revision be based on a further study of wage loss that addresses the community's concerns about the methodology.

Some members of the community cautioned against considering a wage-loss system, and cited the experiences in Florida, though RAND did not recommend such a system. Suggestions were made to consider a hybrid system, as in Texas.

Return to Work

The recommendation to review strategies to increase return to work met with universal support by the community. Job retention after return to work has been problematic. Attention to return to work issues will assist in reducing uncompensated wage loss.

The community pointed out that several of the larger employers in California, which not included in the wage loss study because they are self-insured, have innovative supplemental benefits and programs to support and encourage the prompt return to work.

Suggestions were made to consider employer incentives, to make attorney fees contingent upon return to work, and an incentive program for vocational rehabilitation providers. A concern was expressed that the proposed fast track system may diminish the effectiveness of return to work efforts.

Improve Consistency and Predictability of the Rating Process

The DWC Administrative Director reported that he is implementing RAND's recommendation to take a sample of 100 claims per month, obtaining multiple ratings from Disability Evaluation Unit (DEU) evaluators, and creating a database.

Electronic Filing – WCAB and Medical Reports

The community viewed electronic filing of documents as a function worth exploring, but wanted to ensure privacy and confidentiality of information. The DWC Administrative Director expressed enthusiastic support for this recommendation.

Database on Closed PD Claims

Apart from the DWC Administrative Director's endorsement of this recommendation, the community did not comment. A suggestion was made to start with a database for scheduling the calendar at the WCAB.

Fast Track

The community was intrigued, but cautious, about the RAND recommendation for an elective fast-track system for low rated claims. While the concept is interesting, it was noted that the "devil is in the details", and that further discussion of potential problems would be needed before further action could be considered. The community was also wary of adding another track onto an already complex system.

Community Recommendations

Permanent Disability Benefit Levels

Some members of the community were astounded that RAND proffered no recommendation concerning the permanent disability benefit level.

Based upon the findings of the RAND report, some in the community want an immediate increase in the permanent disability benefit levels to reduce the uncompensated wage loss sustained by injured workers. Others first want to engage in further study, using a refined methodology, to determine wage loss more precisely before considering an adjustment to the PD benefit levels.

The community discussed the political environment in which decisions to increase the PD benefit are made. Reference was made to historical arrangements whereby any proposed increase to the PD benefit level needed to be compensated by savings to employers. Since the workers' compensation premium levels have decreased significantly since the reforms, some contend that the time is right to propose a benefit increase to the Legislature.

Further Study

The following suggestions were made for further study:

- Revisit purpose of the permanent disability benefit.
- Examine reasons for delays in benefit provision to and medical treatment for injured workers.
- Evaluate supplemental benefits and programs provided by some employers.
- Improve the rating tool.
- Determine reasons for wage loss.
- Include self-insured experience in wage loss study.
- Explore approaches to facilitate early return to work.

CHSWC Action on Community Response

CHSWC Permanent Disability Policy Advisory Committee

The CHSWC Permanent Disability Policy Advisory Committee was formed to evaluate the findings and recommendations of the RAND report and the comments from the community and to advise the Commission on future endeavors.

Co-chaired by Commissioners Rankin and Vach, the Committee's first meeting was held on November 18, 1997.

At this first meeting, the Commission's PD Policy Advisory Committee determined that additional information was needed before moving forward with the RAND recommendations. The Committee established the following goals:

- Efficiently decrease uncompensated wage loss.
- Increase the number of people promptly returning to sustained work.
- Reduce the transaction and friction costs including costs to injured workers.

The Policy Committee discussed the possibility for further wage loss analysis, using a revised methodology to address the concerns described above. RAND was asked to cost out some of these analyses item by item and to provide time lines

At the second meeting on January 29, 1998, it was reported that the contract with RAND was being extended to cover this next phase of analyses and that DIR Director John C. Duncan signed the sole-source justification. In addition, DIR Self-Insurance Plans would provide \$75,000 toward further analysis of wage loss incurred by injured workers of self-insured employers.

PD Technical Advisory Committee

A PD Technical Advisory Committee of experts in the field was also formed. However, it was decided that the Technical Committee would only be used on an ad-hoc basis because the group proved too unwieldy to accomplish any tasks and attempted to drive the policy rather than respond to the PD Policy committee.

Meetings with Agencies and the Public

CHSWC staff also held meetings with the Employment Development Department to facilitate future data exchange. There was also a meeting for the public at which RAND answered questions regarding its study methodology. The questions posed by the public reflected the PD Policy Advisory Committee's concerns.

CHSWC Resolution on Permanent Disability Benefit

At its meeting on April 16, 1998, the California Commission on Health and Safety and Workers' Compensation voted on the following:

"Notwithstanding our commitment to conduct long term studies designed to produce recommendations for a more equitable system of adequately compensating California's permanently disabled workers, and we've just made that commitment, the Commission, in accordance with the findings of the RAND study on the issue of uncompensated wage loss suffered by permanently disabled workers, recognizes the need for the legislature to enact an immediate benefit increase to at least begin to remedy the problem documented by RAND"

The vote was 6 for, 0 against, 1 absent, 1 abstention

Research by RAND for CHSWC in Response to Community Concerns

In response to Community concerns, the Commission directed RAND to provide research and technical assistance to the Policy Committee. The primary focus of the research will be to improve the understanding of the uncompensated wage loss identified in the RAND report, so that policies can be designed to efficiently reduce it.

The tasks in the RAND project include:

Technical assistance for the Policy Committee

RAND will provide technical assistance responses to Policy Committee concerns. This has included, thus far, examining the impact of removing the wage loss while receiving TD and the TD benefits from the wage loss estimates, and examining wage loss and wage replacement for various disability ratings categories. RAND has also been asked to disaggregate wage loss by industry, geography, and other variables. RAND will also meet with stakeholder groups as the request of the Executive Director of the Commission to explain methodology and results.

Assess impact of excluding claimants without controls

In this task, RAND will further examine the quality of the controls used in the study. In particular, due to matching issues, a sizable fraction of PPD claimants, approximately 30%, did not have controls and were therefore not included. RAND will compare the included and excluded workers to determine the impact of excluding workers with missing controls from the wage loss analysis.

Wage Loss Study of Self-Insured

Many members of the Community suggested that a significant limitation of the wage loss database constructed by RAND is the lack of information on losses experienced by workers at self-insured firms in California. Self-insured firms employ approximately one-third of covered workers in California, and their experiences may be different than the experiences of insured firms for at least two reasons. First, self-insured firms tend to be much larger than insured firms, providing more opportunities for modified work. Second, it is argued that self-insured firms are more likely to have policies in place that reduce wage loss, including salary continuance, and return-to-work policies. Given these differences, members of the Community have suggested that the wage loss results in the RAND report may not generalize to the self-insured, and therefore the results do not provide a representative description of the experience of PPD claimants in California.

In this task, RAND will collect claims data from the self-insured, link the data to the Employment Development Department database, and estimate wage loss and wage replacement for claimants at self-insured firms.

Analysis of the Impact of Local Economic Conditions on Wage Loss and Return to Work

The wage loss analysis in the RAND report documented the wage losses of workers injured in 1991 and 1992, during a period of recession in California. Members of the Community have suggested that wage losses during the recession may not be indicative of the current situation in California. To address this concern, RAND will examine the impact of changes in local economic conditions on wage losses of claimants. These estimates will be used to project the impact of the improving economy on the estimates of wage loss in the report.

Thanks and Acknowledgements

The Commission thanks the many people in the workers' compensation community who shared perspectives and data for the study, who participated in the Summit and who continue to work together to improve this important and complex system.

In the "Projects and Studies" section of this report are listings of the

- Speakers at Summit
- Members of CHSWC Blue-Ribbon PD Policy Advisory Committee
- Members of CHSWC PD Self-Insured Subcommittee

The Commission also gratefully acknowledges the appreciation expressed by the community for efforts in providing a systematic and analytical evaluation of the California workers' compensation permanent disability system, including the study by the RAND organization.

PERMANENT DISABILITY EVALUATION

SYSTEM PERFORMANCE

CHSWC wishes to monitor the overall performance of the entire system to determine whether it meets the Constitutional objective to “accomplish substantial justice in all cases expeditiously, inexpensively, and without incumbrance of any character ...”.

In this section, CHSWC has been attempting to provide performance measures to assist in evaluating the system impact on everyone, particularly on workers and employers.

Through its studies and from the community, CHSWC has compiled the following information pertaining to the performance of California’s systems for health, safety and workers’ compensation. Brief interpretations are provided with the graphical representations.

The first subsection deals with how well the system is operating, in terms of the volumes of workload and the timeliness of actions. This affects both employers and employees. The second subsection discusses the costs, of particular interest to employers. The impact on workers in terms of benefits and outcomes is the focus of the third subsection.

Administrative Operations

- DWC Incoming workload
- DWC Hearings
- DWC Decisions
- DWC Lien decisions
- Vocational rehabilitation plan approvals and disapprovals
- Vocational rehabilitation decisions and orders after conference

Costs

- Premium costs
- Insurer expenditures
- Indemnity
- Medical-legal costs

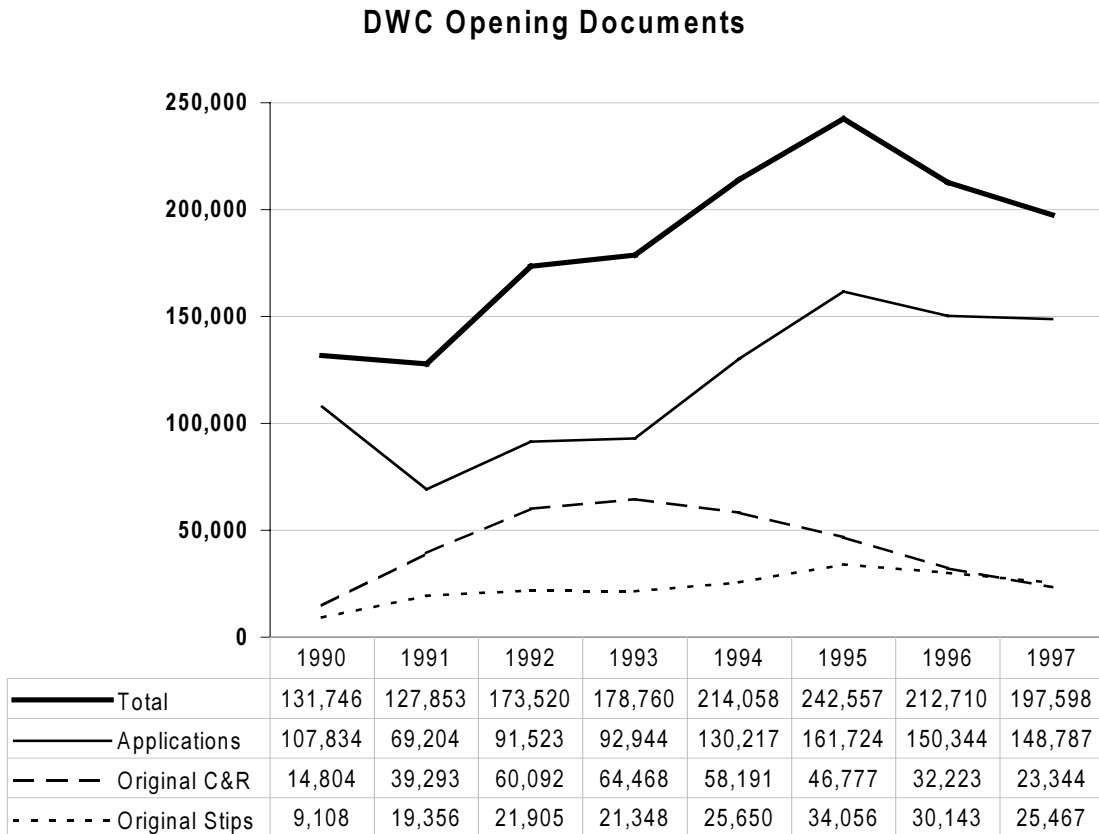
Outcomes

- Injury and Illness Rates
- Permanent Disability
- Vocational Rehabilitation

ADMINISTRATIVE OPERATIONS

DWC Opening Documents

The number of documents filed with the DWC to open a WCAB case on a workers' compensation claim has fluctuated during the 1990's. This variability in pattern is coincident with the implementation of the workers' compensation reform legislation of 1989 and 1993.



Source: Division of Workers' Compensation

The chart above shows that although the number of applications for adjudication of claim dropped significantly, the substantial increases in original C&Rs and Stips made the total numbers filings relatively unaffected from 1990 to 1991.

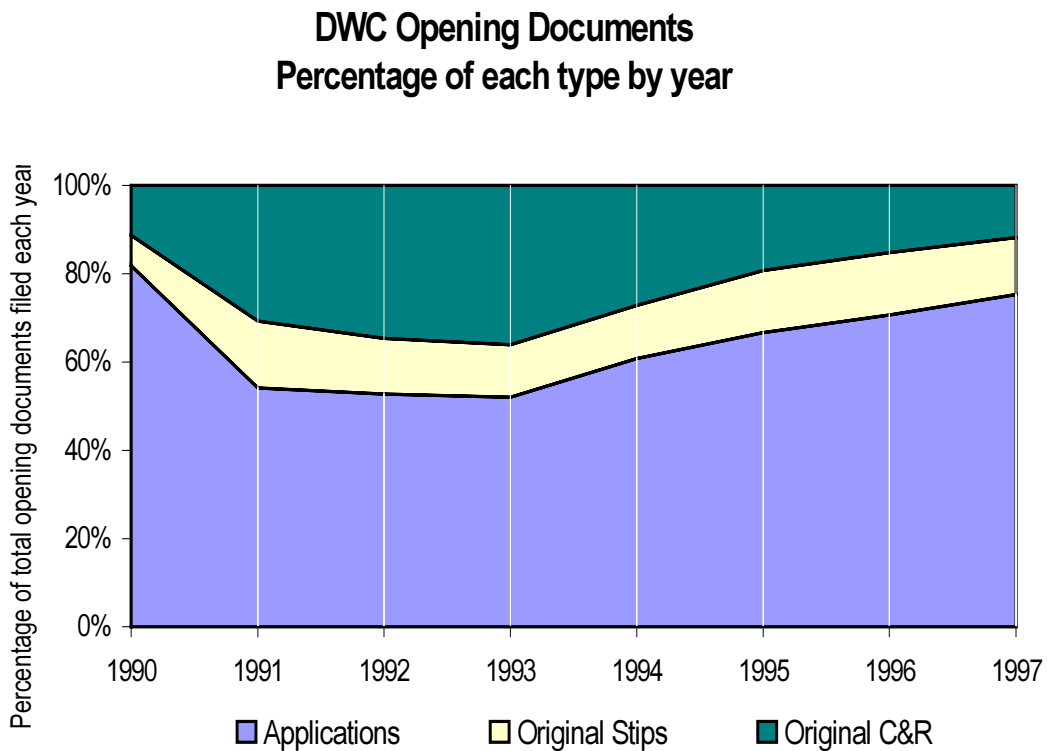
The period from 1991 to 1992 shows growth in all categories of case opening documents. This was followed by a year of leveling off between 1992 and 1993.

The period from 1993 to 1995 is one of substantial increases in applications, slight increases in Stips and significant decreases in C&Rs.

The numbers of opening documents in all categories declined from 1995 to 1997.

Mix of Opening Documents

As shown in the graphic below, the proportion or “mix” of the types of case-opening documents received by DWC varied during the 1990’s.



Applications for Adjudication of Claim initially dropped from about 80% of the total in 1990 to less than 60% in 1991, reflecting increases in both original Stips and C&Rs. The numbers of applications were steady from 1991 to 1993, then rose again through 1997.

The proportion of “original” (case-opening) Stipulations rose slightly from 1991 to 1992 then remained fairly constant.

The proportion of original C&Rs filed rose sharply from 1990 to 1991, increased slightly from 1991 to 1993, then declined during the period from 1993 to 1997.

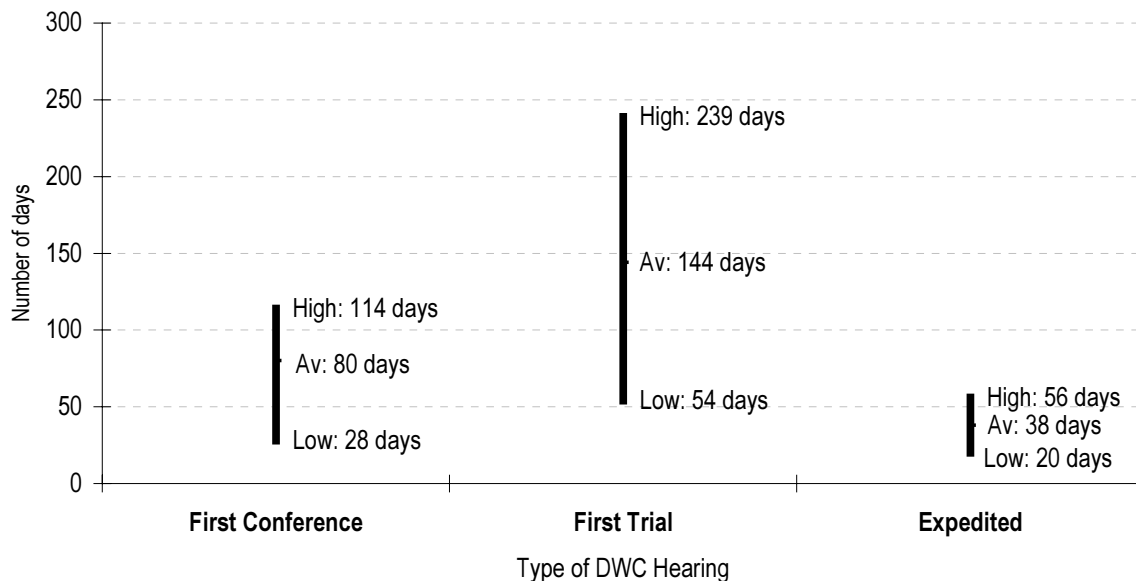
DWC Hearings

California Labor Code Section 5502 specifies the time limits for various types of hearing conducted by DWC on WCAB cases.

In general, a conference is required to be held within 30 days of the receipt of a request in the form of a Declaration of Readiness. A trial must be held within 60 days of the request, or within 75 days if a settlement conference has not resolved the dispute. An expedited hearing must be held within 30 days of the receipt of the Declaration of Readiness.

The graphic below illustrates the elapsed time between request and hearing in the DWC as of January 1998. Shown are the high, low and average span of days, as reported by the DWC district offices. For example, the elapsed time to first conference ranges from a high of 114 days in one office to a low of 28 days in another office, with a statewide average of 80 days.

**Elapsed Time in Days from Request to DWC Hearing
(as of January 1998)**



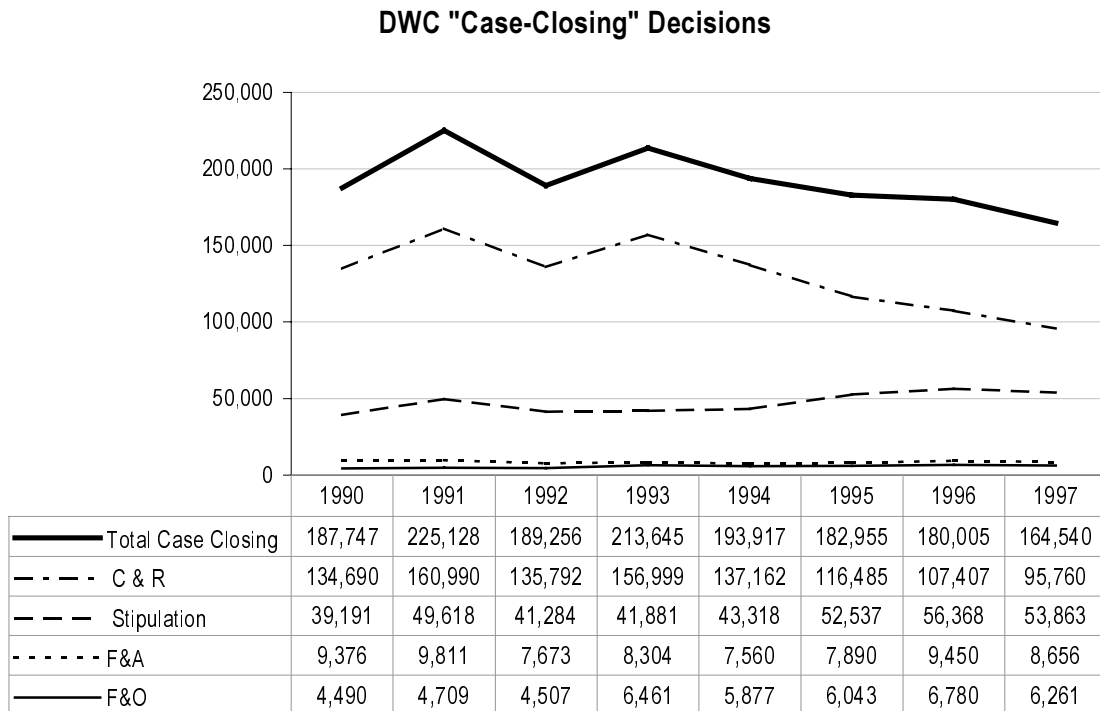
Source: Division of Workers' Compensation

Revised 10.6.98

SYSTEM PERFORMANCE

DWC Decisions

These data indicate that the number of decisions made by DWC that are considered to be case closing have declined overall during the 1990s.



Source: Division of Workers' Compensation

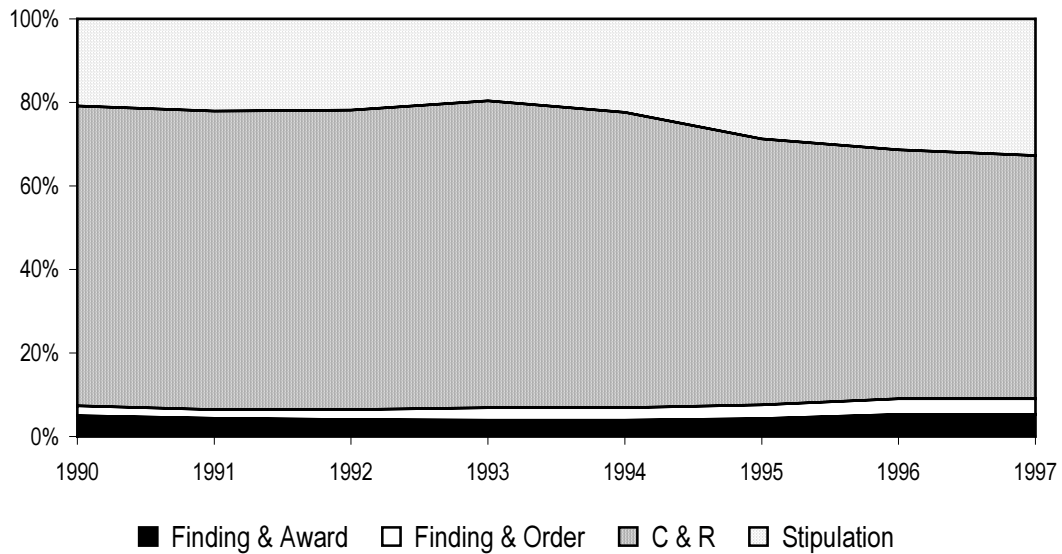
- F&Os and F&As have remained fairly constant.
- Stipulations have risen slightly.
- C&Rs rose from 1990 to 1991, declined from 1991 to 1992, rose again from 1992 to 1993 and then have declined from 1993 to 1997.

Mix of DWC Decisions

As shown on the charts on the previous page and below, the vast majority of the case-closing decisions rendered during the 1990s were in the form of WCAB judge approval of Stipulations and Compromise and Releases which were originally formulated by the case parties.

Only a small percentage of case-closing decisions evolve from a Finding and Award or Finding and Order, issued by a WCAB judge after a hearing.

DWC Decisions
Percentage Distribution by Type of Decision



The relative proportion of the types of decisions rendered by the DWC remained fairly constant from 1990 to 1993.

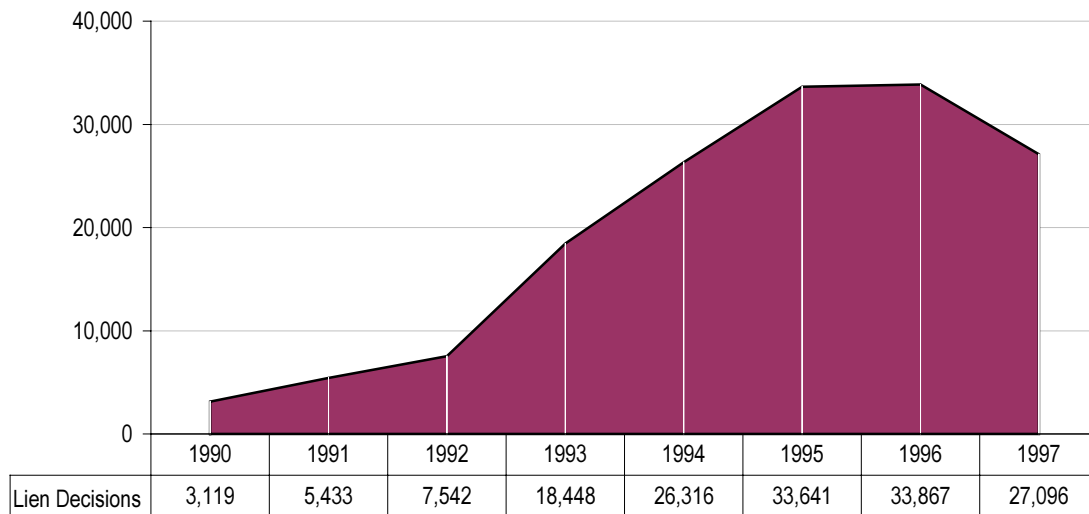
Then during the period from 1993 to 1997, the proportion of Stipulations rose while the proportion of C&Rs declined.

DWC Lien Decisions

The DWC has been dealing with a large backlog of liens filed on WCAB cases.

These data indicate a large growth in decisions regarding liens filed on WCAB cases and a concomitant expenditure of DWC staff resources on the resolution of those liens.

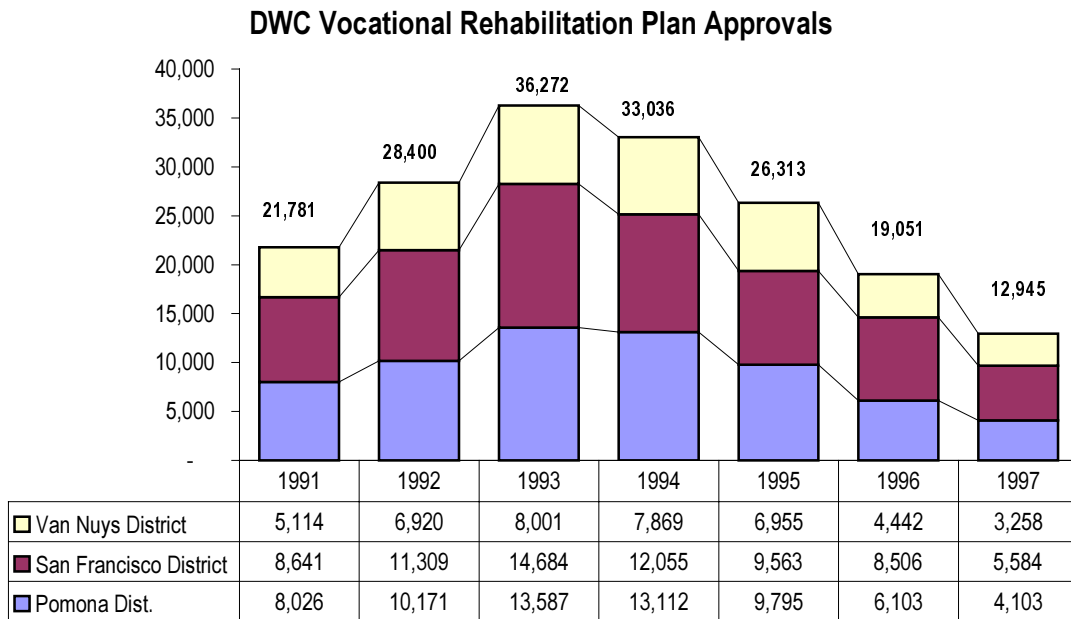
DWC Decisions on Liens



Source: Division of Workers' Compensation

Vocational Rehabilitation Plan Approvals

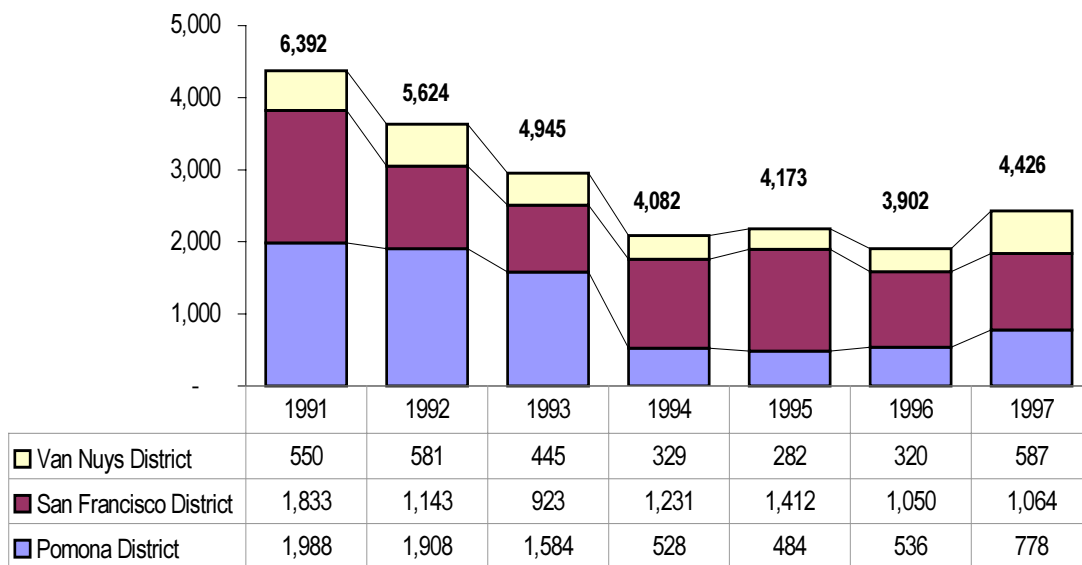
The numbers of vocational rehabilitation plans approved by the DWC rose from 1991 to 1993, then have declined steadily and significantly from 1993 to 1997.



Source: Division of Workers' Compensation

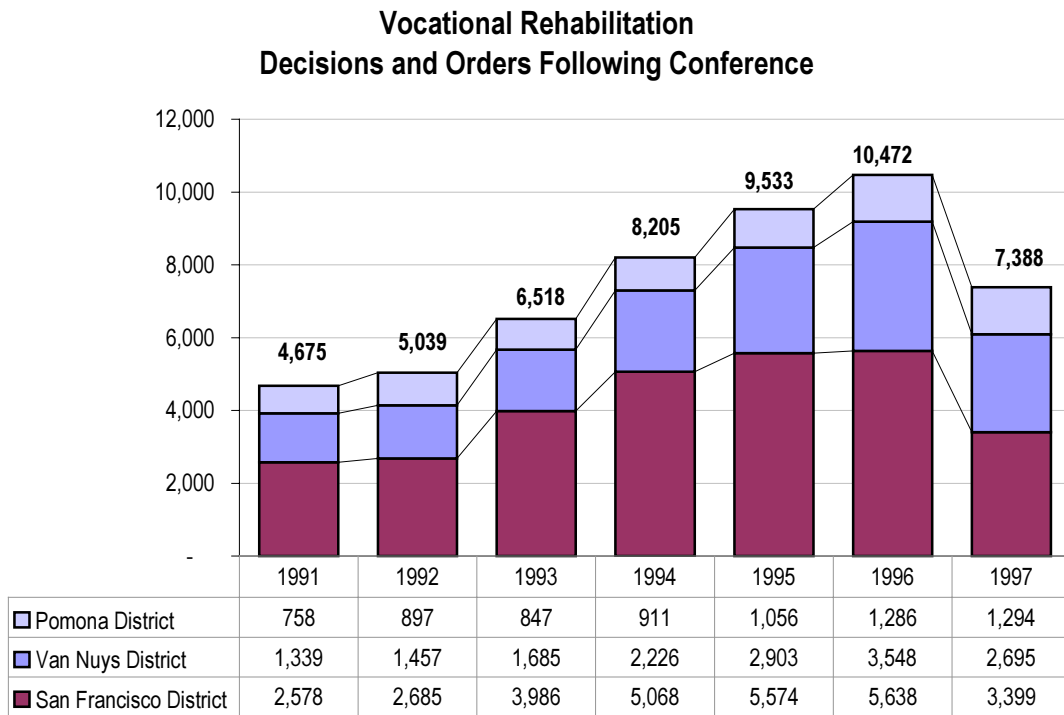
Vocational Rehabilitation Plan Disapprovals

DWC Vocational Rehabilitation Plan Disapprovals



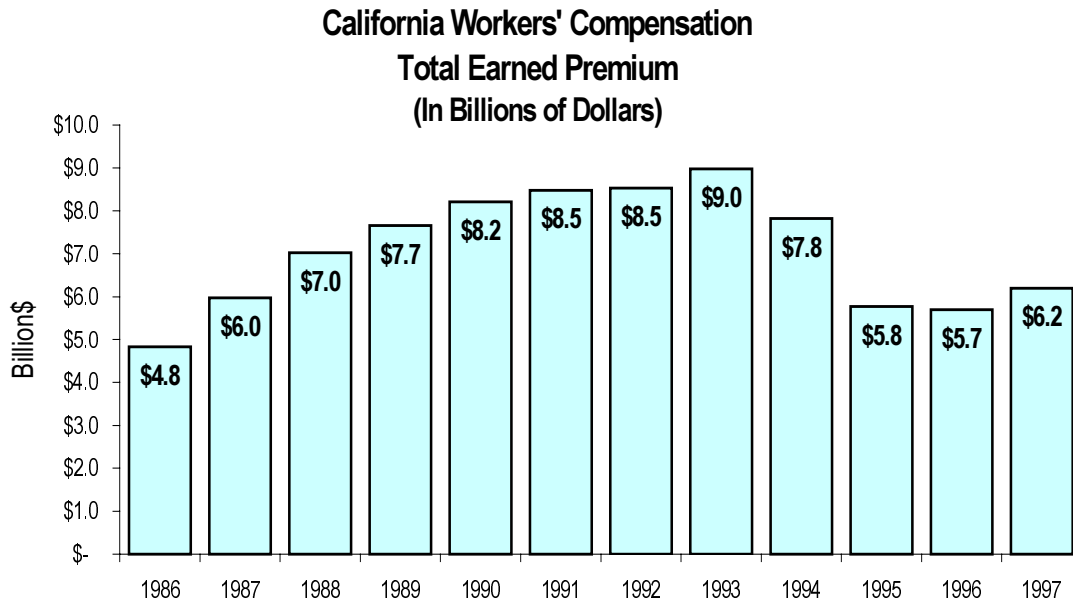
Source: Division of Workers' Compensation

Vocational Rehabilitation Decisions



Source: Division of Workers' Compensation

COSTS

Workers' Compensation Premium

Source: California Workers' Compensation Insurance Rating Bureau

While the overall rates charged for workers' compensation insurance have dropped an estimated 5%-6%, the total amount of workers' compensation premium paid increased slightly to \$6.2 billion in 1997.

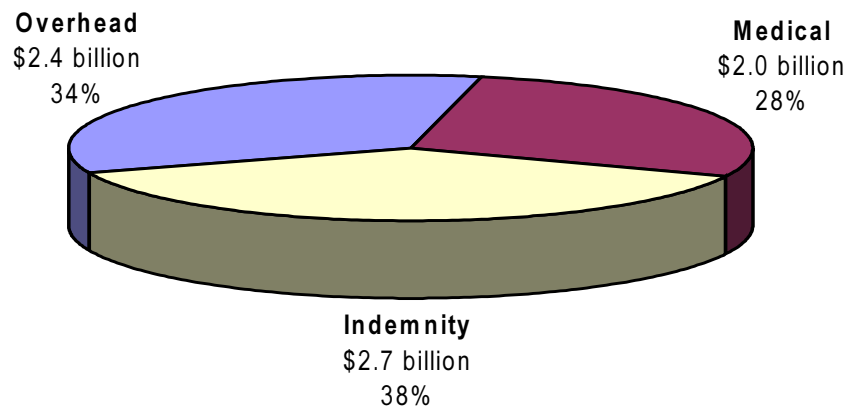
This increase in total premium appears to be reflective of

- movement from self-insurance to insurance,
- an increase in economic growth,
- wage growth and
- long-term movement from a manufacturing to a service economy.

Workers' Compensation Expenditures

Insurers in California expended over \$7 billion on workers' compensation during 1997, according to the Workers' Compensation Insurance Rating Bureau of California (WCIRB).

Workers' Compensation Expenditures Insurers in California - 1997



Insurers' overhead expenses, totaling \$2.4 billion, consist of:

Loss adjustment expenses	\$1.1 billion
Commissions	\$0.4 billion
Other acquisition expenses	\$0.3 billion
General expenses	\$0.4 billion
State and miscellaneous taxes	\$0.2 billion

Medical costs paid by insurers, totaling \$2.0 billion, consist of:

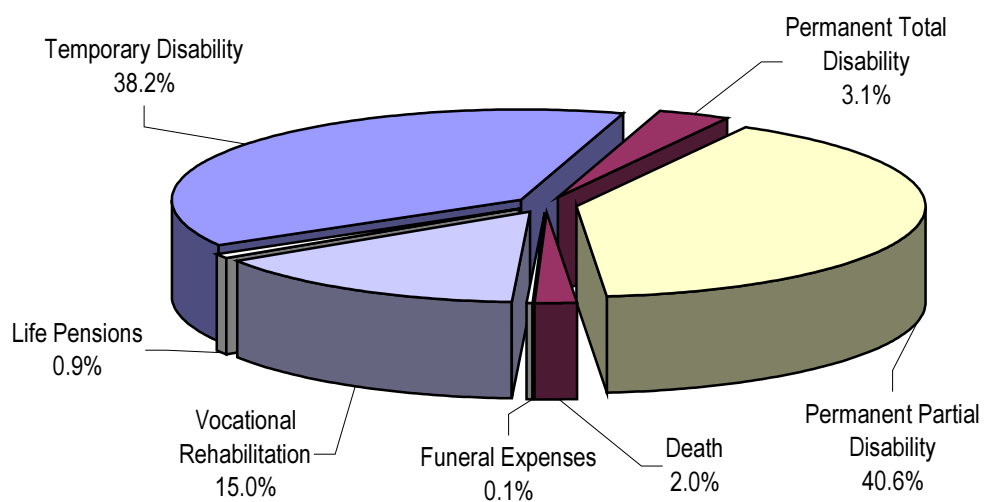
Treating physicians	\$1.0 billion
Hospitals	\$0.5 billion
Payments made directly to patient	\$0.2 billion
Medical-Legal evaluations	\$0.1 billion
Drugs	\$0.1 billion
Other medical costs	\$0.04 billion

SYSTEM PERFORMANCE

Total workers' compensation indemnity benefits paid during 1997 totaled \$2.7 billion:

Permanent partial disability benefits	\$1.1 billion
Temporary disability benefits	\$1.0 billion
Vocational rehabilitation benefits	\$0.4 billion
Other indemnity benefits	\$0.2 billion

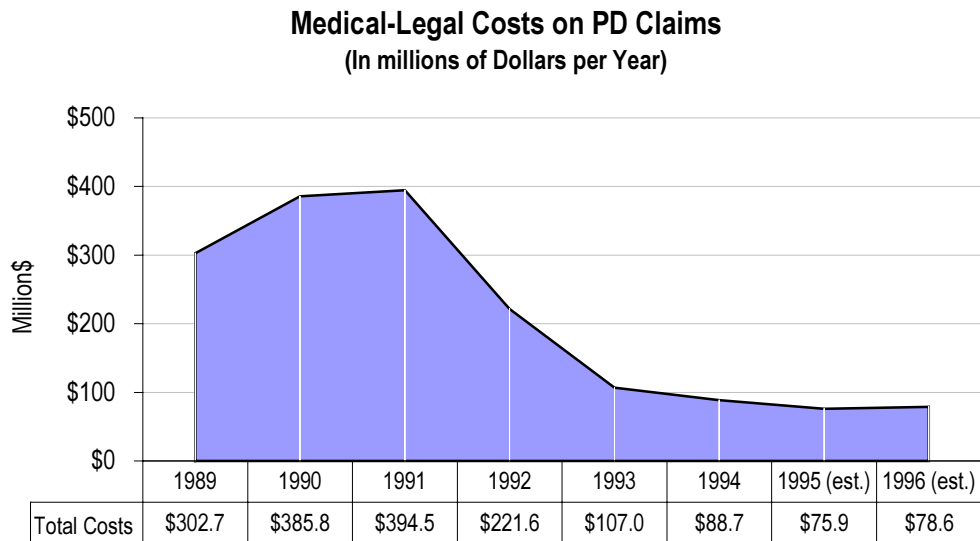
Workers' Compensation Indemnity Benefits Paid in California - 1997



Source: Workers' Compensation Insurance Rating Bureau of California

Medical-Legal Costs on Permanent Disability Claims

There has been a dramatic decrease in the total costs of medical-legal examinations for workers' compensation claims with a permanent disability component.



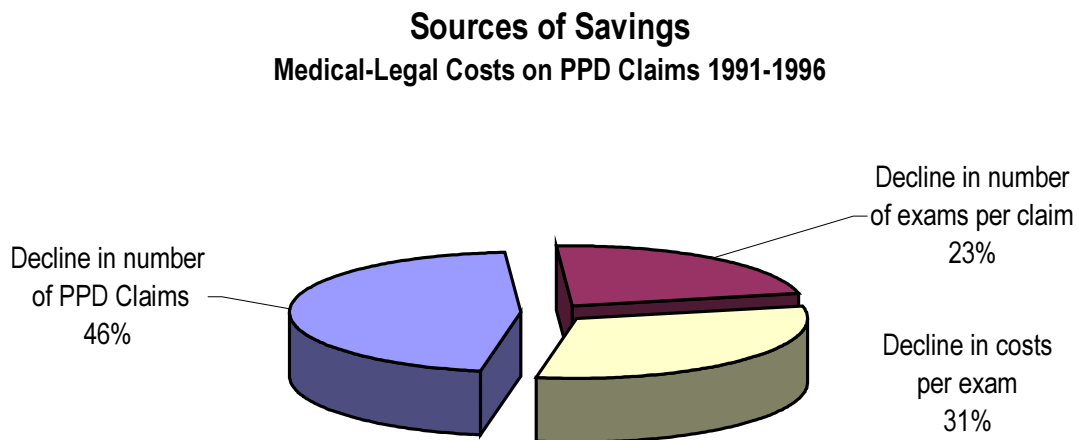
Source: CHSWC Medical-Legal Study

Total medical-legal costs grew from 1989 to 1991, then declined precipitously until 1993 and then declined slightly to a period of leveling off between 1995 and 1996.

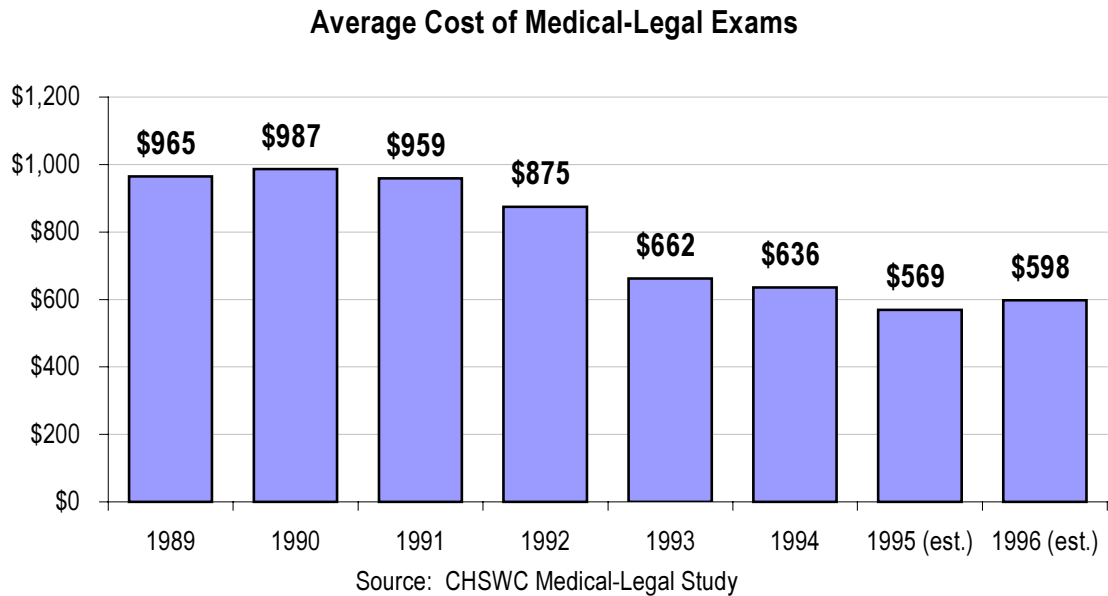
Sources of Savings on Medical-Legal Costs

The sources of the savings in medical-legal costs from 1991 to 1996 are graphically depicted below.

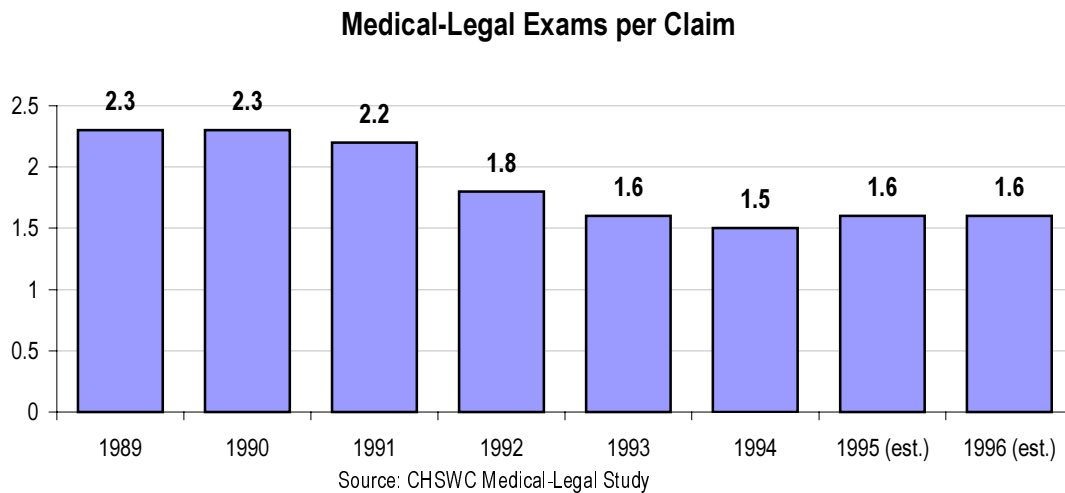
Nearly half of the savings results from the decline in the number of PPD claims. Almost one-quarter of the savings can be attributed to the decrease the number of exams per claim. The decline in the costs per exam contributes nearly one third of the savings.



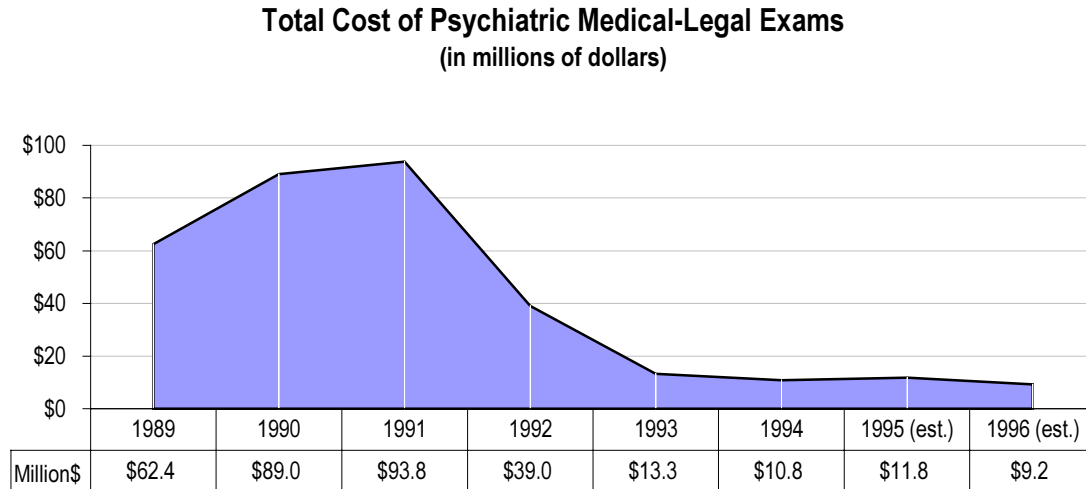
Average Cost of Medical-Legal Exams



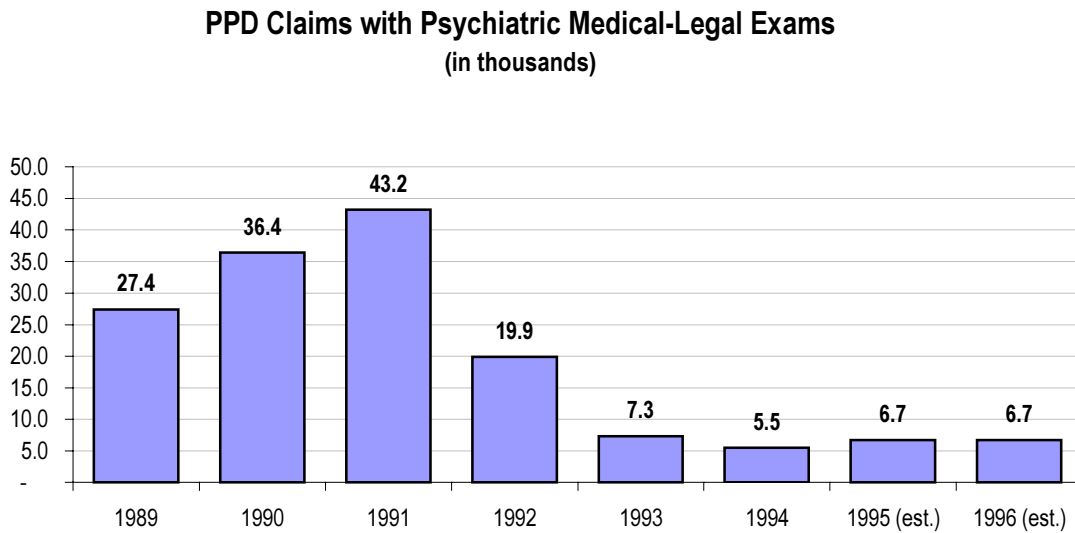
Medical-Legal Exams Per Claim



Total Cost of Psychiatric Medical-Legal Exams



PPD Claims with Psychiatric Medical-Legal Exams



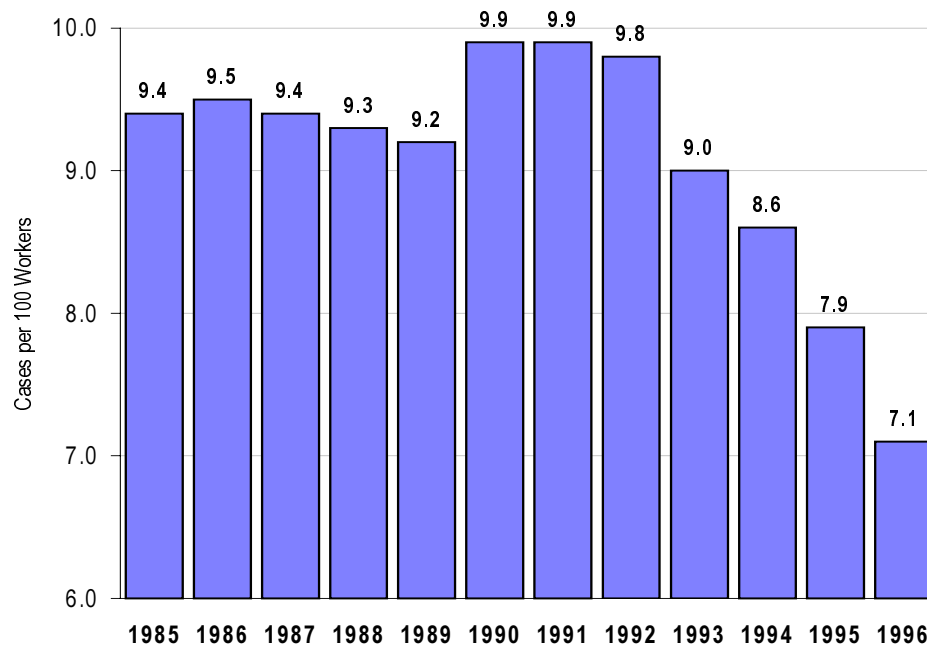
Source: CHSWC Medical-Legal Study

SYSTEM PERFORMANCE

OUTCOMES**Injury and Illness Rates**

From relatively high levels in the early 1990's, the injury and illness rates in California have declined steadily and significantly.

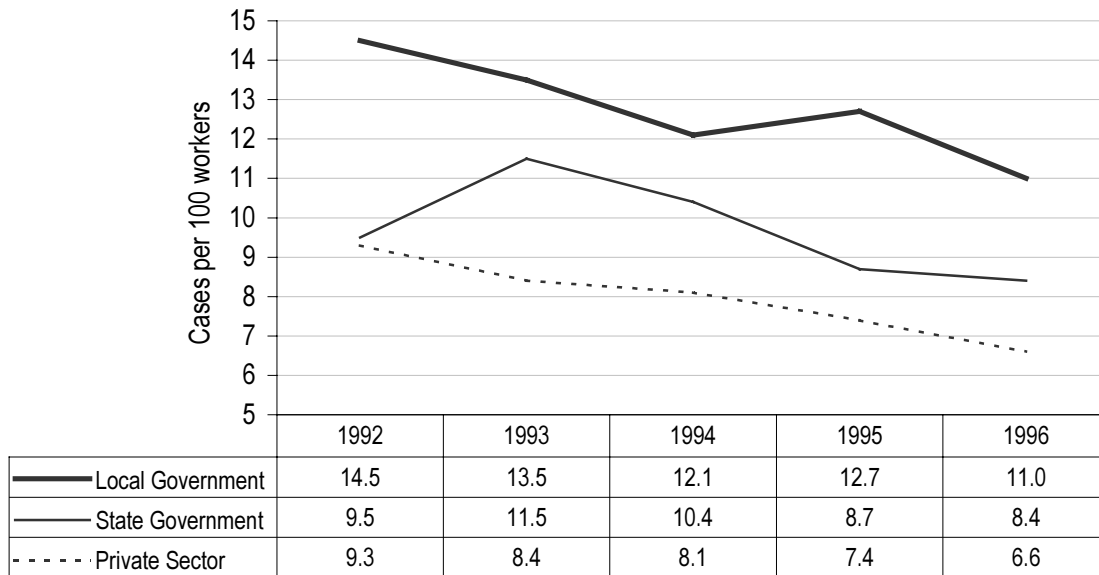
OSHA Injury and Illness Rates in California



Source: Division of Labor Statistics and Research

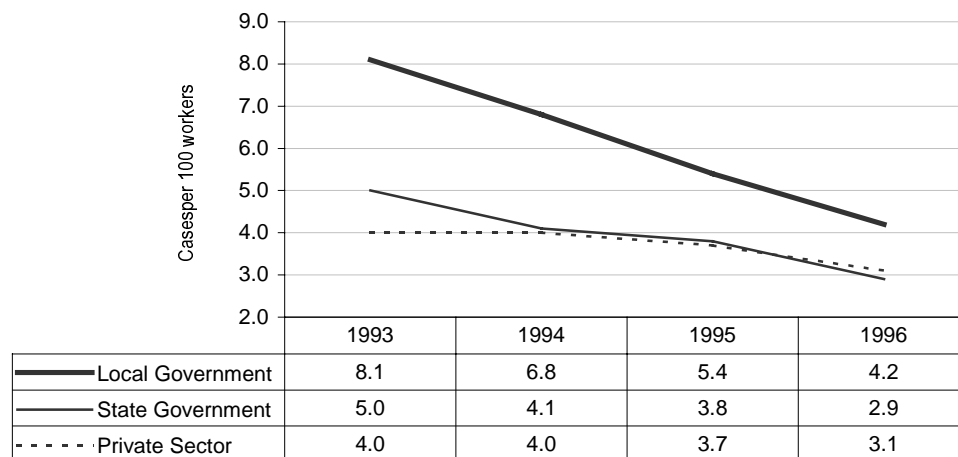
As shown on the following page, the injury and illness rates and the lost time injury rates for the public and private sectors are also declining.

Occupational Injury and Illness Rates in California by Sector



Source: Division of Labor Statistics and Research

Lost Time Injury and Illness Rates in California by Sector



Source: Division of Labor Statistics and Research

Permanent Disability Benefit and Program

Compensating Permanent Workplace Injuries

The CHSWC study of permanent disability conducted by RAND found that workers of insured employers who suffer workplace injuries resulting in a permanent disability experience large and sustained wage losses. CHSWC is currently conducting a study on the experiences of injured workers employed by self-insured employers.

Moreover, researchers concluded that permanent partial disability (PPD) benefits, on average, compensate 40 percent of those lost wages. Severely disabled workers received benefit increases in 1993 and have a higher fraction of wage loss replaced, approximately two-thirds.

Contrary to the expectations of policymakers, the less serious disabilities have large wage losses as well; but replacement rates for these workers are as low as 12 percent.

The qualitative portion of the RAND study was based on interviews with many different system participants. The consensus of those interviewed was that the reforms generally improved the system, but that serious problems linger. Workers' compensation premiums, insurers' costs, and the number of PPD claims have decreased; medical costs have fallen sharply; and abusive claims practices have been reduced. However, stakeholders agreed that the system remains highly adversarial and litigious, is excessively complex, and delivers modest benefits at high costs.

A particularly problematic area is the process for rating permanent disability. Currently, injured workers who have suffered a permanent disability begin to receive PPD benefits when (a) they have returned to work or (b) their condition is judged unlikely to improve, even with additional medical treatment.

PPD payments are meant to compensate workers for their lost ability to compete in the open labor market. Since this lost ability is impossible to observe directly, payments are determined by a disability rating schedule. Essentially, the schedule converts a doctor's description of the injury and resulting impairment into a number between 1 and 100. The higher the rating, the more weeks of benefits a worker receives.

Most PPD claims have ratings below 25 and are therefore considered "minor." These minor disabilities account for 90 percent of PPD claims, 80 percent of medical benefits, 70 percent of indemnity benefits, and 60 percent of legal fees. Injuries that are assigned minor ratings, however, range from the loss of the ability to do heavy lifting (a rating of 20), to the loss of the sense of smell or taste (a rating of 5 for each), to the loss of a finger (a rating between 3 and 16 depending on the digit and joint of amputation).

In addition to medical findings, the California disability rating system uses "subjective" information such as an injured worker's level of pain or reduced ability to lift heavy objects in an attempt to describe the impact on a worker's ability to continue work. However, system participants allege that this process results in actual ratings that vary substantially among individuals with similar injuries; ratings of individual workers also

vary according to the doctor who evaluates them or the rater who rates them. This variability is one source of dispute.

Employers and insurers desire a more consistent and predictable rating system, but applicants' attorneys and labor fear that revising the system in this fashion will also reduce the number of people eligible for benefits. They argue that if ratings are based solely on objective, medically determined conditions, many claimants may no longer be eligible even if they are truly disabled.

Wage-Loss Study Finds Significant Uncompensated Losses

To estimate the financial impact of a workplace injury, researchers linked two state databases, one for wages and the other for workers' compensation claims. These matched records allowed them to track injured workers' earnings five years before and after injury and then assess disability ratings, benefits, and post-injury wages. These data were collected for 30,000 PPD claimants injured between 1991 and 1994. (This study used data representing 70 percent of workers' compensation claims in the state between 1991 and 1994. Data for employees at self-insured firms were not included.)

The next step was to estimate what workers would have earned had they not been injured, a task accomplished by identifying a matched control group of uninjured workers in the same firms at the same time who made similar wages. A comparison of injured workers with their controls revealed that over the five years before the workplace injury, average quarterly earnings for PPD claimants and control workers are virtually identical. Based on their prior experience in the labor market, there is no evidence to suggest that PPD claimants are predisposed to low wages or excessive time out of work.

But the experiences of injured workers and their controls diverge markedly after the injury.

Time Out of Work

First, PPD claimants experience substantial time out of work even after their initial return.

Figure 1 on the following page illustrates that these reductions begin with the quarter of injury and continue for five years afterwards. Workers with higher disability ratings have more time away from work. Five years after an injury, 10 percent of those with the lowest disability ratings remain out of work; about half of those with high ratings do.

Figure 1—PPD claimants experience significant time out of work.

Wages

Back on the job, PPD claimants also make lower wages than their uninjured coworkers.

When time out of work is included in the calculation of wage loss, injured workers are shown to experience substantial losses, as seen in Figure 2 on the next page. Together, the shaded areas in this graph represent the full measure of earnings lost from reduced wages and increased time out of work. PPD claimants injured in 1991 and 1992 received approximately 40 percent less in earnings over the four to five years after their injuries than did their uninjured coworkers.

Figure 2—Workplace injuries result in long-term drops in earnings, but workers' compensation benefits replace less than have the lost wages.

The study also found that workers' compensation benefits—including total temporary disability (TTD), permanent partial disability, and vocational rehabilitation maintenance allowance (VRMA)—cushion workers from reduced wages and time away from work only for a short period after the injury. (See the dark gray area in Figure 2.)

Because wage losses persist and because benefit payments run out, benefits compensate slightly less than 40 percent of workers' full losses over a five-year period after an accident.

Ratings Process Falls Short of Its Objectives

The results of the wage-loss study enabled researchers to assess the disability ratings schedule. Their analyses found that PPD ratings for low-rated claims—the bulk of claims—are especially problematic. Simply put, ratings do not predict wage losses for those with minor claims. While applicants with the highest disability ratings do have higher proportional wage losses than those with less seriously rated injuries, minor-injury ratings do not correspond well to wage losses.

As Table 1 shows, over a five-year period after an injury, disabled workers with ratings in the lowest categories—1-5, 6-10, and 11-20—all experience comparable wage losses, whereas the requirement that ratings reflect the loss of ability to compete itself suggests that wage losses should increase incrementally by category.

Table 1: The Relationship between Disability Ratings and Wage Loss
(over five years)

<u>Disability Rating</u>	<u>Total Wages Lost</u> <u>(including time away from work)</u>	<u>Wages Replaced</u> <u>by Benefits</u>
1 to 5	30%	12%
6 to 10	29%	21%
11 to 20	32%	35%
21 to 35	46%	51%
36 to 99	69%	48%
Average	40%	38%

The adequacy of workers' compensation benefits also differs between major and minor claims. Benefits most fully replaced lost wages for claimants with disability ratings above 20, as shown in Table 1.

In contrast, for workers with minor disabilities, benefits replace only a small fraction of lost wages. For instance, for workers with disability ratings 1–5, only 12 percent of wage losses are replaced. This group—and indeed all PPD applicants with disability ratings below 16—has not received an increase in PPD benefits since 1984. These findings about the schedule's problems suggest that the perennial complaints about the system's inequities may be true.

System participants' views that ratings vary too widely have also led to charges of inequity. To assess this issue, researchers compared ratings for the same injury assigned by raters at two different state agencies and, unfortunately, confirmed participants' suppositions.

Figure 3 in the next page shows that claims with a rating of 10 given by insurance adjusters to 1,663 workers received ratings ranging from 2 to 82 at the state evaluation unit. The size of this spread illustrates why many believe the process is both unpredictable and inequitable; in turn, these criticisms may make the system unnecessarily litigious.

Figure 3—Disability ratings for the same injury vary widely.

That wage losses are so large among workers with minor claims is perhaps the most surprising and poorly understood result of this research.

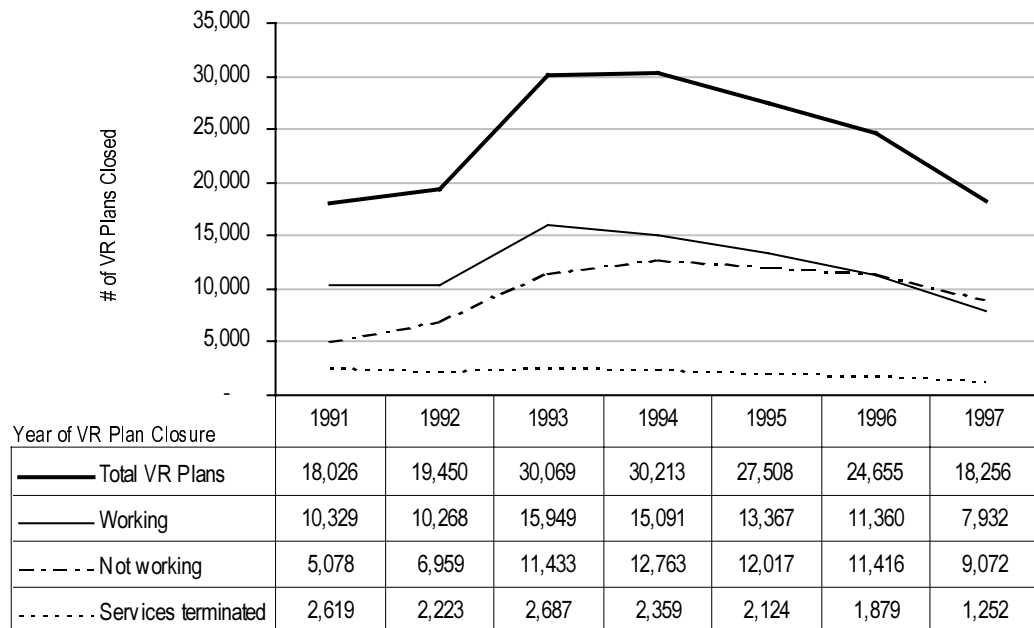
Unfortunately, researchers do not know if the injuries and resulting disabilities associated with the low ratings are, in fact, not as minor as the ratings suggest or, alternatively, if even modest workplace injuries have consequences far beyond the resulting impairment—for example, disruption of career development or strain on worker-employer relations because of the injury or the claim.

Vocational Rehabilitation

Work Status at Plan Closure

This graph depicts the numbers of Vocational Rehabilitation (VR) plans that were closed during the 1990s by the injured workers' employment status at the time of plan closure.

Work Status at VR Plan Closure



Source: Division of Workers' Compensation

The total numbers of vocational rehabilitation plans approved increased slightly from 1991 to 1992, then rose dramatically from 1992 to 1993 and stayed on that high level through 1994. From 1994 to 1997, the total number of plans closed declined each year until reaching the 1991 level.

The numbers of persons working at time of plan closure were static from 1991 to 1992, rose and maintained at that level from 1993 to 1994, then decreased steadily.

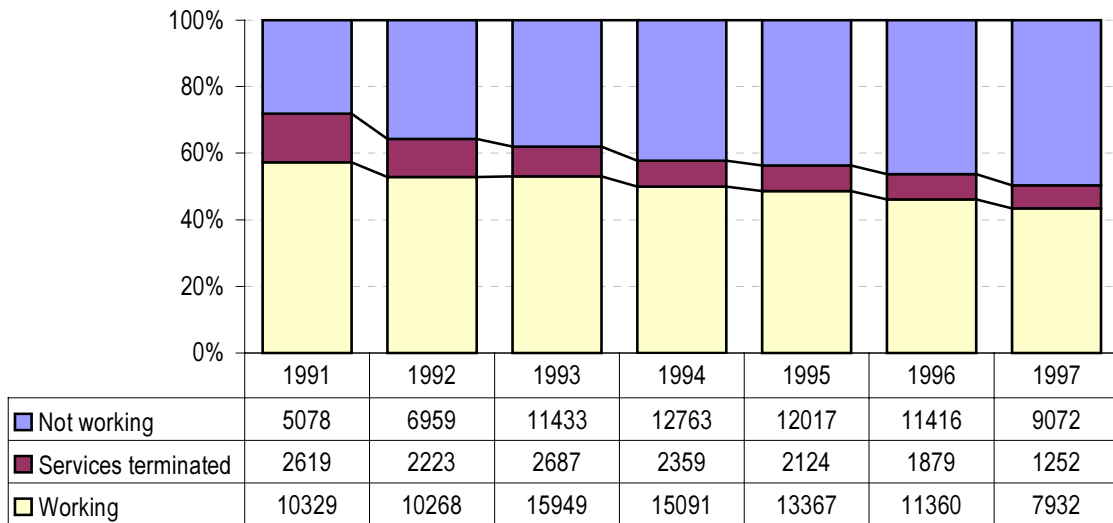
The numbers of injured workers who were not working at the time of VR plan closure rose dramatically from 1991 to 1994, then declined slightly to 1997. The numbers of plan terminations remained fairly constant before declining in 1996 and 1997.

Vocational Rehabilitation Outcomes

The chart below depicts the relative status of injured workers at the time of the completion of their vocational rehabilitation plan.

Clearly, the vocational rehabilitation outcomes for injured workers have worsened during the 1990s.

DWC Vocational Rehabilitation Plan Outcomes



Source: Division of Workers' Compensation

The proportion of rehabilitated employees working at the time of plan completion has declined during the 1990's. So has the proportion of those workers whose rehab services were terminated before plan completion.

Consequently, the proportion of workers not working at the time of plan completion has increased steadily during that time.

NEW WORKERS' COMPENSATION LAWS 1997 AND 1998

This section describes significant California legislation affecting workers' compensation passed by the Legislature and signed by the Governor during 1997 and up until August 12, 1998. An analysis of the impact of each bill on the existing law is included.

Assembly Bills

AB 237

Introduced by Assembly Member Figueroa

This bill puts a cap of \$3,000 for vocational evaluation, evaluation of vocational feasibility, initial interview, vocational testing, counseling and research for plan development, and preparation of a specified form and \$3,500 for plan monitoring, job seeking skills, and job placement research and counseling. But in no event would the aggregate of these categories exceed \$4,500.

In addition, this bill provides that agreed-upon vocational rehabilitation plans shall not include a period of job placement exceeding 60 days unless the plan is exclusively utilizing transferable skills and experience for direct placement activities, in which case, the period of job placement may be up to 90 days.

AB 349

Introduced by Assembly Member Firestone

Existing law provides for an assessment of employers for enhanced investigation and prosecution of workers' compensation fraud. These funds are available to the Bureau of Fraudulent Claims of the Department of Insurance, and also for distribution by the Insurance Commissioner to district attorneys upon application. Applications, annual reports, or other documents relative to these moneys are public records.

This bill provides that the application for money and the distribution of money shall be public documents but the information submitted to the commissioner under these provisions concerning active or inactive criminal investigations shall be confidential.

AB 877

Introduced by Assembly Member Miller (Coauthor: Senator Solis)

Existing law authorizes the Insurance Commissioner to disapprove a rate if a workers' compensation or employers' liability insurer fails to comply with certain filing requirements.

This bill provides that a hearing to review the manner in which a rating system has been applied in connection with insurance afforded or offered be held within 60 days from the date on which the party requests the appeal or longer upon agreement of the parties. It provides that if the commissioner has information on the subject, as specified, the appeal may be denied without a hearing.

In addition, existing law requires the commissioner to designate a rating organization to assist him or her, among other things, in developing a classification system for workers' compensation insurance. Existing law provides that any person aggrieved by any decision, action, or omission to act of an insurer or a rating organization may request reconsideration, as specified.

This bill requires the commissioner, on or before January 1, 1999, to adopt regulations to implement and consolidate an appeals process, as specified.

AB 1004

Introduced by Assembly Member Thompson (Principal coauthor: Senator Monteith) (Coauthor: Senator Solis)

This bill provides that at least 40% of assessment funds deposited into the Fraud Account in the Insurance Fund for a program to fund increased investigation and prosecution of workers' compensation fraud shall be provided to the Bureau of Fraudulent Claims of the Department of Insurance, and at least 40% shall be provided to district attorneys submitting an application for funds, as specified.

AB 2164

Introduced by Assembly Member Wayne

This bill provides that all workers' compensation referees are subject to the Code of Judicial Ethics adopted by the California Supreme Court

AB 2334

Introduced by Assembly Member Baugh

This bill authorizes the Workers' Compensation Insurance Rating Bureau to use electronic media when transmitting experience rating information.

Senate Bills

SB 150

Introduced by Senator Kopp

This bill requires all employers to give any employee who is a victim of a crime that occurred at the employee's place of employment written notice that the employee is eligible for workers' compensation for injuries that may have resulted from the crime.

SB 450

Introduced by Senator Peace

This bill requires that the Administrative Director of the Division of Workers' Compensation to adopt regulations specifying the data elements for the workers' compensation information system to be collected by electronic data interchange. The bill also requires the information system to be cost efficient.

SB 563

Introduced by Senator Brulte

Existing law, which took effect on September 30, 1996, provides that whenever a specified firefighter or peace officer is killed in the performance of his or her duty or dies as the result of an accident or injury caused by external violence or physical force incurred in the performance of his or her duty, the employer shall continue providing health benefits to the deceased employee's spouse and minor dependents under the same terms and conditions provided prior to the death of the employee, unless the surviving spouse elects to receive a lump-sum survivor's benefit in lieu of monthly benefits.

This bill requires local employers to continue to provide these health benefits to the spouses and dependents of deceased firefighters or peace officers who died in the line of duty prior to September 30, 1996.

SB 952

Introduced by Senator Johnson

Existing law provides that any school district, county superintendent of schools, or school administered by the State Department of Education, that provides training to pupils through work experience education, cooperative vocational education, or community classrooms is considered to be an employer for the purpose of provisions of law governing workers' compensation.

This bill extends this provision to apprenticeship programs registered by the Division of Apprenticeship Standards of the Department of Industrial Relations, relative to registered student apprentices.

SB 1141

Introduced by Senator Johnson

This bill provides controls on the data collected for the workers' compensation information system. This bill prohibits any person or public or private entity not a party to a workers' compensation claim to obtain individually identifiable information, as defined, obtained or maintained by the Division of Workers' Compensation, except as expressly permitted under specified provisions.

This bill also requires the Administrative Director to adopt regulations governing access to this information by certain divisions of the Department of Industrial Relations, and by other persons or public or private entities for the purpose of bona fide statistical research, and would provide that these provisions shall not operate to exempt from disclosure any information that is considered to be a public record contained in an individual's file once an application for adjudication has been filed.

The bill also provides that these provisions shall not operate to restrict access to information by any law enforcement agency or district attorney's office or to limit admissibility in any criminal proceeding.

In addition, this bill declares it unlawful for any person who has received individually identifiable information pursuant to these provisions to provide that information to any person who is not entitled to it.

SB 1217

Introduced by Senator Johnston

Existing law requires an insurer to report to its rating organization as corrections or revisions of losses, pursuant to the unit statistical plan and uniform experience rating plan approved by the Insurance Commissioner, if a claim has closed for 60% or less of its highest reported incurred value.

This bill instead provides that whenever a claim or claims used in an experience rating are closed and reported pursuant to the unit statistical plan approved by the commissioner and are valued, in aggregate, at an amount that is less than 60% of the highest reported aggregate value of all of these claims, the experience rating shall be revised pursuant to the uniform experience rating plan approved by the commissioner based on the most current reported values for all claims used in the experience rating.

SB 2101

Introduced by Senator Peace

This bill amends Labor Code Section 4600.7 to establish a five-year repayment schedule to repay the \$1.7 million General Fund loan which was authorized in the Budget Act of 1994 to fund the administration of the Workers' Compensation Health Care Organization (HCO) program. This program was enacted as part of the 1993 workers' compensation reform legislation to help reduce the medical costs of workers' compensation by expanding the use of managed care.

CHSWC & THE COMMUNITY

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Community Activities

The California Commission on Health and Safety and Workers' Compensation (CHSWC) is pleased to report that its members and staff have had the privilege of participating in several activities of the health and safety and workers' compensation community.

California Applicants' Attorneys Association

Executive Officer briefing on RAND study of permanent disability

California Association of Joint Powers, 16th Annual Fall Conference

Executive Officer presentation

California Chamber of Commerce

Executive Officer presentation

California Department of Insurance

Fraud Advisory Committee

California Workers' Compensation Institute

Research committee
Annual Meeting

California Manufacturers Association

Executive Officer presentation at annual meeting

California Medical Association

Executive Officer presentation

California Self-Insured Employers Association

California Society of Industrial Medicine and Surgery

Californians for Compensation Reform

Executive Officer presentation

Council of Self Insured Public Agencies (COSIPA)

Executive Officer presentation on RAND permanent disability report
and other CHSWC activities

Fraud Assessment Commission

Industrial Medical Council

Executive Officer presentation

International Association of Industrial Accident Boards and Commissions

Western Association Annual Meeting in Oregon
Presentation by Commissioners McLeod and Vach

Interstate Labor Standards Association

Legislature

Executive Officer presentation

Northern California Self-Insured Employers

Executive Officer presentation

State of California

Department of Finance

Executive Officer presentation on CHSWC projects and budget

Department of Insurance

Executive Officer presentation permanent disability

Employment Development Department

State Compensation Insurance Fund

Workers' Compensation Research Group

22nd Annual National Symposium on Workers' Compensation

Workers' Compensation Research Institute

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